

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No. 19-cv-150-DMT-ARS

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF:
PATRICK WYNTERS "WYN" HORNBUCKLE -
U.S. DEPARTMENT OF JUSTICE, MAIN JUSTICE
December 15, 2022
Via RemoteDepoTM

STATE OF NORTH DAKOTA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

PURSUANT TO NOTICE AND AGREEMENT, the Rule 30(b)(6) videotaped deposition of PATRICK WYNTERS "WYN" HORNBUCKLE, U.S. DEPARTMENT OF JUSTICE, MAIN JUSTICE, was taken on behalf of the Plaintiff in Washington, D.C., by remote means on December 15, 2022, at 8:59 a.m. Mountain Standard Time, before Tracy C. Masuga, Registered Professional Reporter and Certified Realtime Reporter, appearing remotely from Denver County, Colorado.

December 15, 2022

			Page 2	Page 4
1	REMOTE APPEARANCES			
2	For the Plaintiff:			
3	PAUL B. KERLIN, ESQ.		1 Exhibit 855 Email to Hirsch, et al., from Hornbuckle, 9/9/16, Subject: RE: Judge Boasberg's Order/Opinion and Joint Army/Interior/Justice Statement; with attached emails; MYERS_00010033 - MYERS_00010035	77
4	Greenberg Traurig LLP 1000 Louisiana Street Suite 6700 Houston, Texas 77002 kerlinp@gtlaw.com			
5			4 Exhibit 856 Email to Diver, et al., from Hornbuckle, 9/9/16, Subject: RE: Judge Boasberg's Order/Opinion and Joint Army/Interior/Justice Statement; with attached emails; MYERS_00010036 - MYERS_00010037	80
6			5 Exhibit 857 Email to Wray from Hornbuckle, 9/9/16, Subject: RE: Standing Rock - Possible state press conference at 11:30 central; with attached emails; MYERS_00045235 - MYERS_00045238	81
7	PAUL M. SEBY, ESQ.			
8	Greenberg Traurig LLP 1144 15th Street Suite 3300 Denver, Colorado 80202 sebyp@gtlaw.com			
9				
10	For the Defendant:			
11	JANE E. BOBET, ESQ.		11 Exhibit 858 Email to Hackworth, et al., from Hornbuckle, 9/12/16, Subject: RE: Standing Rock - Possible state press conference at 11:30 central; with attachments; with attached emails; MYERS_00044231 - MYERS_00044249	84
12	TIMOTHY B. JAFEK, ESQ.			
13	VICTOR WILLIAM SCARPATO III, ESQ.			
14	Department of Justice U.S. Attorney's Office District of Colorado 1800 California Street Suite 1600 Denver, Colorado 80202 jane.bobet@usdoj.gov			
15			15 Exhibit 859 Email to Ames, et al., from Williamson, 9/12/16, Subject: RE: DAPL Daily Update Security 9 Sep 16 (UNCLASSIFIED); with attached emails; USACE_00084181 - USACE_00084182	89
16			16 Exhibit 860 Email to Keller from Kirchmeier, 12/14/16, Subject: Re: URGENT Associated Press inquiry from Blake; with attached emails; ND_000256324 - ND_000256329	96
17				
18				
19				
20				
21				
22				
23	Also Present:			
24	Michael Banks, Videographer Rachel Hymel Corin Stigall			
25				
			Page 3	Page 5
1	I N D E X			
2	EXAMINATION OF PATRICK WYNTERS "WYN" HORNBUCKLE: PAGE			
3	December 15, 2022			
4	By Mr. Kerlin	8, 103		
5	By Ms. Bobet	101		
6	INITIAL DEPOSITION EXHIBITS: REFERENCE			
7	(Exhibits provided electronically to the reporter.)			
8	Exhibit 850 Email to Hirsch, et al., from Hornbuckle, 9/6/16, Subject: [Non-DoD Source] ABC Caution-news: Judge Grants Partial Stop on North Dakota Pipeline Work; ARMY_00028388 - ARMY_00028389	47		
9				
10				
11				
12	Exhibit 851 Telephone Conference Invite from Hackworth to Hornbuckle, et al., 9/7/16, Subject: Standing Rock Touch Base; MYERS_00010012	52		
13				
14	Exhibit 852 Email to Hackworth, et al., from Hornbuckle, 9/7/16, Subject: RE: Standing Rock - Cell Phone Numbers; with attached emails; MYERS_00043796 - MYERS_00043797	54		
15				
16				
17	Exhibit 853 Email to Hirsch and Tompkins from Hornbuckle, 9/9/16, Subject: [Non-DoD Source] RE: FINAL Drafts of Statements; with attached emails (Redacted); ARMY_00117974- ARMY_00117977	56		
18				
19				
20				
21	Exhibit 854 Email to Hirsch and Tompkins from Hornbuckle, 9/9/16, Subject: [Non-DoD Source] RE: FINAL Drafts of Statements; with attached emails (Redacted); ARMY_00117979- ARMY_00117982	73		
22				
23				
24				
25				

December 15, 2022

<p style="text-align: right;">Page 6</p> <p>1 WHEREUPON, the following proceedings 2 were taken pursuant to the Federal Rules of Civil 3 Procedure.</p> <p>4 * * * * *</p> <p>5 (Deposition Exhibits 850 through 860 6 were introduced by Mr. Kerlin and electronically 7 provided to the court reporter for marking.)</p> <p>8 THE VIDEOGRAPHER: We are now on the 9 record. Participants should be aware that this 10 proceeding is being recorded and, as such, all 11 conversations held will be recorded unless there is a 12 request and agreement to go off the record.</p> <p>13 Private conversations and other 14 attorney-client interactions should be held outside 15 the presence of the remote interface.</p> <p>16 This is the remote video-recorded 17 deposition of Wyn Hornbuckle. Today is Thursday, 18 December 15, 2022. The time is now 3:59 p.m. UTC, 19 8:59 a.m. Mountain. We are here in the matter of 20 State of North Dakota v. United States of America.</p> <p>21 My name is Michael Banks, remote video 22 technician on behalf of U.S. Legal Support. I'm not 23 related to any party in this action, nor am I 24 financially interested in the outcome.</p> <p>25 At this time will the reporter, Tracy</p>	<p style="text-align: right;">Page 8</p> <p>1 PATRICK WYNTERS "WYN" HORNBUCKLE, 2 having been first duly sworn to state the whole truth, 3 testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. KERLIN:</p> <p>6 Q. Good morning, Mr. Hornbuckle. Did I 7 pronounce that right?</p> <p>8 A. That's correct. Good morning, 9 Mr. Kerlin.</p> <p>10 Q. Good morning. I'm -- I'm an attorney 11 with the law firm Greenberg Traurig and a Special 12 Assistant Attorney General for North Dakota. I, along 13 with my colleague Paul Seby, who is also attending 14 this deposition, represent the State of North Dakota 15 in the action in which this deposition is being taken.</p> <p>16 Today I'll likely refer to my client as 17 "North Dakota," just so that you're aware of that.</p> <p>18 Would you state your full name.</p> <p>19 A. My name is Patrick Wynters Hornbuckle.</p> <p>20 Q. Okay. And I'll also note that this</p> <p>21 deposition of Mr. Hornbuckle is taken pursuant to the 22 notice that was served on counsel, and agreement of 23 the parties.</p> <p>24 Mr. Hornbuckle, where are you currently</p> <p>25 located?</p>
<p style="text-align: right;">Page 7</p> <p>1 Masuga on behalf of U.S. Legal Support, please 2 enter the statement for remote proceedings into the 3 record.</p> <p>4 THE REPORTER: The attorneys 5 participating in this deposition acknowledge that I am 6 not physically present in the room and that I will be 7 reporting this proceeding remotely.</p> <p>8 They further acknowledge that in lieu of 9 an oath administered in person, the witness will 10 verbally declare his testimony in this matter is under 11 penalty of perjury.</p> <p>12 Counsel, please indicate your agreement 13 by stating your name and your agreement on the record.</p> <p>14 MR. KERLIN: This is Paul Kerlin on 15 behalf of the plaintiff, North -- the State of North 16 Dakota, and we agree.</p> <p>17 MS. BOBET: And this is Jane Bobet on 18 behalf of the defendant, The United States of America, 19 and we agree.</p> <p>20 THE REPORTER: Mr. Hornbuckle, do you 21 solemnly state that the testimony you are about to 22 give in the cause now pending will be the truth, the 23 whole truth, and nothing but the truth?</p> <p>24 THE DEPONENT: I do.</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I'm located in Washington, D.C., at the 2 Main Justice Department.</p> <p>3 Q. Anybody else in the room with you?</p> <p>4 A. No.</p> <p>5 Q. Okay. Have you been deposed before?</p> <p>6 A. No. This is my first time.</p> <p>7 Q. Okay. I'm -- I'm sure some of this 8 you've been over with counsel, but we've agreed to 9 take this deposition, and a lot of these depositions 10 in this case, remotely. If you have any issues with 11 any tech issues -- sometimes we have connectivity 12 issues, things of that nature -- just speak up, let us 13 know. We can go off the record, try and get that 14 resolved, and then get -- get back to it.</p> <p>15 I would ask that you wait until I finish 16 asking my question before you give your answer so we 17 can try and minimize any talking over each other so 18 the court reporter can take everything down.</p> <p>19 I would also ask that you provide verbal 20 answers. Sometimes we shake our head or nod our head. 21 If I prompt you for an answer, it's simply so that the 22 court reporter can get a verbal response and note that 23 in the written record, okay?</p> <p>24 A. Okay.</p> <p>25 Q. If at any time you don't understand my</p>

Object to
all
testimony
as to
hearsay,
802

December 15, 2022

<p style="text-align: right;">Page 10</p> <p>1 question, please let me know; I'll try and rephrase 2 it.</p> <p>3 We'll take a break at any time you need 4 to. I would ask that we -- we try and -- I would ask 5 that you answer the question pending if there is one, 6 and then, you know, of course, we can accommodate any 7 need for any breaks that come up, okay?</p> <p>8 A. Okay. Yes.</p> <p>9 Q. Good. You've been -- you've been 10 designated as what we refer to as a 30(b)(6) or 11 representative witness. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. For the topics on which you've been 14 designated, and those in the notice are 6, 10, 13, 15, 15 20, and 21. You are the 30(b)(6) representative for 16 the Department of Justice, Main Justice, okay? That's 17 the way the designation was given to us.</p> <p>18 A. Okay.</p> <p>19 Q. So you understand that when you provide 20 testimony with respect to those topics, that you are 21 speaking on behalf of the Department of Justice, and 22 your answers bind the Department of Justice with 23 respect to those topics?</p> <p>24 A. I do.</p> <p>25 Q. Okay. Can you tell me what you did to</p>	<p style="text-align: right;">Page 12</p> <p>1 of collectively.</p> <p>2 A. Sure. So counsel was there in each one 3 of these, Jane Bobet from the U.S. Attorney's office. 4 There were also folks from the Environment and Natural 5 Resources Division, from the Community Relations 6 Service, also from the Army Corps of Engineers, the 7 Office of Tribal Justice, and -- yep, and that was -- 8 that's generally the folks who were in these meetings.</p> <p>9 Q. And -- and for the --</p> <p>10 Okay. And just were those all 11 attorneys, or were some of them attorneys and some of 12 them not?</p> <p>13 A. I believe most were attorneys. I'm not 14 an attorney, so -- but there are a lot of attorneys 15 here at -- at Justice in most of these positions, 16 so . . .</p> <p>17 Q. Sure. You said you also spoke with some 18 individuals. Was that separate and apart from the six 19 times that you had the -- the meetings over the seven 20 and a half hours?</p> <p>21 A. No, just the -- just the individuals in 22 the meetings.</p> <p>23 Q. Okay. Can you tell me the names of the 24 individual -- I'm sorry. I -- I can't read my notes here. You said Community Relations, was that right?</p>
<p style="text-align: right;">Page 11</p> <p>1 prepare for your deposition?</p> <p>2 A. So I -- I reviewed materials; I met with 3 individuals in the department; met with counsel; and I 4 also looked at some of my own email traffic to -- to 5 refresh my memory of these events.</p> <p>6 Q. Okay. I just want to go through those. 7 You said you -- you met with counsel. How many times 8 did you meet with counsel?</p> <p>9 A. I met six times.</p> <p>10 Q. Remotely or in person?</p> <p>11 A. Remotely.</p> <p>12 Q. Approximately how long for the total 13 time of those six?</p> <p>14 A. Approximately seven and a half hours.</p> <p>15 Q. Okay. Just so I'm clear, that's in 16 total time?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then can you tell me who was 19 present?</p> <p>20 A. Yes. At each one, or --</p> <p>21 Q. Yeah. I don't really need to go through 22 each six times, but if you can just tell me 23 generally --</p> <p>24 A. Correct.</p> <p>25 Q. -- who was in attendance at all, so kind</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Community Relations Service. It's the 2 Justice Department arm. So that was Justin Lock; 3 Antoinette Barksdale, who's a general counsel; as well 4 as Karen Gibbs, also a deputy general counsel.</p> <p>5 Q. Okay. And then the Office of Tribal 6 Justice?</p> <p>7 A. Yes. The director of Office of Tribal 8 Justice is Tracy Toulou.</p> <p>9 Q. Okay. And -- and it looks like you 10 might be reading from something. Do you have some 11 documents in front of you?</p> <p>12 A. Just the notes that counsel provided me 13 in the binder -- binders that were the materials, 14 yeah.</p> <p>15 Q. Okay. And it sounds like, you know, you 16 were reading that, so you were -- that forms some of 17 the basis of your testimony today so far?</p> <p>18 A. Yes, some of the basis, but I -- I 19 participated in all of these meetings. I was also 20 involved in all of these events at the time and know 21 all of these individuals.</p> <p>22 MR. KERLIN: Okay. We would make a 23 request for the notes that Mr. Hornbuckle is reviewing 24 that forms the basis of part of his testimony.</p> <p>25 MS. BOBET: No problem.</p>

December 15, 2022

ND OBJ.:
611

Page 14

1 Q. (BY MR. KERLIN) Okay. Okay. I want to
 2 pull up the notice. So it's 803, Exhibit 803.
 3 Mr. Hornbuckle, have you seen this
 4 document before?

5 A. Yes.

6 Q. Okay. What I would like to do is get
 7 right to No. 6. No. 6 is on the next -- there we go,
 8 bottom of the page. "Public statements made by
 9 government officials about any applications for DAPL
 10 Special Use Permits or any decisions made or actions
 11 taken regarding such applications."

12 So for the Department of Justice, can
 13 you tell me if there were any public statements made
 14 by the Department of Justice about any applications
 15 for DAPL special-use permits?

16 A. No, there were not.

17 Q. Okay. What about the second part of
 18 that, "any decisions made or actions taken regarding
 19 such applications." Did the Department of Justice
 20 have any actions or -- or have any involvement with
 21 any such application for a special-use permit?

22 A. No. That would -- that would fall
 23 outside of the Department's authorities and -- and
 24 rest with the -- with the Department of Army Corps.

25 Q. Okay. Let's look at No. 10. No. 10 is

Page 15

1 "Actions taken" -- excuse me. Strike that. Let me
 2 start over.

3 "Actions considered and taken by the
 4 U.S.A. in response to use/occupation of Corps-managed
 5 land by someone without either written permission or a
 6 Special Use Permit. This request is geographically
 7 limited to the Northwest Division of the U.S. Army
 8 Corps of Engineers and includes the general or typical
 9 policies, procedures, and practices as well as those
 10 specifically for situations similar to the DAPL
 11 protests"

12 With respect to the Department of
 13 Justice, were there any actions considered or taken in
 14 response to the use or occupation of Corps-managed
 15 land by someone without either written permission or a
 16 special-use permit?

17 A. So the -- the Department considered a
 18 number of -- of actions and -- and things in response
 19 to the situation on the ground at that time in terms
 20 of what sort of resources that we had to deploy to
 21 support law enforcement and support the peaceful --
 22 peaceful protest and a peaceful outcome to the
 23 situation.

24 We were overall concerned with defusing
 25 and deescalating the situation there. So we looked at

Page 16

1 a number of the resources. I meant folks were, like,
 2 the Civil Rights Division, the Office of Tribal
 3 Justice, the Community Relations Service. These are
 4 the kind of tools that the Department has -- the COPS
 5 Office as well -- to assist in these -- these types of
 6 situations.

7 Q. Okay. I want to go through the
 8 resources that you -- you mentioned that were
 9 considered, and then we can talk about whether any
 10 were actually deployed.

11 So starting at the end there, you
 12 mentioned the COPS Office. What is the COPS?

13 A. So that's the Office of Community
 14 Oriented Policing Services. And the COPS Office is --
 15 assists law enforcement, generally state, local,
 16 tribal law enforcement, in, you know, advancing the
 17 practice of community policing.

18 Among other things, they provide
 19 information to local law enforcement agencies who are
 20 dealing with significant issues, such as this DAPL
 21 protest.

22 So the COPS Office has expertise in
 23 this. They have -- you know, they have -- they have
 24 worked with police departments across the country
 25 about mass-protest situations to further

Page 15

1 "Actions taken" -- excuse me. Strike that. Let me
 2 start over.

Page 17

1 Constitutional policing, to handle things peacefully
 2 and lawfully.

3 Q. When were -- when was anyone from the
 4 Community Oriented Policing Services deployed out to
 5 the DAPL protest area?

6 A. So COPS officials met with some of the
 7 local county sheriffs approximately September 2016.
 8 They brought in other law enforcement officials who
 9 had experience with large protests and dealing with
 10 tribes.

11 So there was a meeting, for instance, at
 12 the Morton County command center to introduce
 13 themselves and suggest strategies to deescalate
 14 tensions.

15 Q. Okay. And I want to know specifically
 16 how many individuals. So when you say "deployment," I
 17 want to make sure I understand. Was this one
 18 individual? Was this two individuals? Was it more?

19 A. I don't have a precise number, and I --
 20 and I don't have that information right at this
 21 moment.

22 Q. How long did they stay out there and
 23 provide this -- this support to local law enforcement?

24 A. I don't know precisely, but -- but I
 25 don't think it was more than a couple of days,

December 15, 2022

<p style="text-align: right;">Page 18</p> <p>1 although they may have continued to have 2 communications not in person.</p> <p>3 Q. And you understand that the protest 4 started sometime around the middle of August and 5 continued until February of 2017, so a protracted 6 period of time, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So we have the -- the Community 9 Oriented Policing Services that were out there for a 10 couple of days. What else?</p> <p>11 A. So in addition to that, the Community 12 Relations Service did also deploy and meet with many 13 stakeholders in that event.</p> <p>14 So CRS provides -- you know, they are 15 the peacemakers of the department. They were -- they 16 provide facilitated dialogue, mediation, consultation.</p> <p>17 So they are not an investigatory or 18 prosecutorial agency. They actually further the 19 nonviolent resolution of issues and problems related 20 to tensions, such as those that were at the DAPL 21 protest.</p> <p>22 So they requested -- I believe they 23 were -- the Native American leadership requested their 24 services in August, and they deployed several 25 conciliators with tribal experience from their</p>	<p style="text-align: right;">Page 20</p> <p>1 part of your question?</p> <p>2 Q. I just wanted to know how long or how 3 many days they were out there.</p> <p>4 A. They were there on a number of 5 occasions, but I don't have a precise number. I know 6 they exper- -- they -- they participated, for 7 instance, in a major meeting on September 5 with 8 all -- with as many stakeholders representing the 9 different groups, both law enforcement and tribe -- 10 tribe, but also the camp folks who were from the 11 protest camps.</p> <p>12 Q. Okay. Is it fair to say that they 13 didn't provide law enforcement support with respect to 14 local and state law enforcement?</p> <p>15 A. They're not -- they're there to support 16 dialogue and try to resolve differences. So to that 17 extent, I think that that is a form of support. But I 18 think that their -- you know, their mission is to 19 facilitate dialogue between groups who are having 20 tension.</p> <p>21 Q. And the Community Relations Service as 22 well as the Community Orienting [sic] Policing --</p> <p>23 A. Policing, yeah.</p> <p>24 Q. -- Policing Services --</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 19</p> <p>1 regional offices. They're organized regionally and 2 have folks they are able to deploy in different parts 3 of the country.</p> <p>4 And so several were sent to the Standing 5 Rock Reservation to facilitate dialogue and help with 6 deescalation. So they were building up a rapport with 7 stakeholders, met with federal, state, and local 8 government, social services group, and -- and with -- 9 and with tribal members.</p> <p>10 Q. How many individuals from the Community 11 Relations Service were sent out to the DAPL protest 12 area?</p> <p>13 A. Several, although I -- I don't have a 14 precise number.</p> <p>15 Q. And you mentioned some of the 16 individuals that they met with, and that they were out 17 there at the request of the -- of the tribe. How long 18 were they out there?</p> <p>19 A. Well, they were requested by Native 20 American leadership, so there were also Native 21 organizations that -- that were also aware of the 22 situation there. There are many different tribes 23 who -- who were -- who were concerned with this, so we 24 were -- they were not just from a single tribe.</p> <p>25 But, I'm sorry, I -- what was the second</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. -- both of those, they don't have sworn 2 peace officers; is that correct?</p> <p>3 A. That -- that is correct. I mean, the 4 COPS Office sometimes has former police officers, 5 people with a lot of experience in police -- policing 6 services and community policing, but they don't have 7 enforcement authorities.</p> <p>8 Q. Okay. What else? We talked about those 9 two. You had mentioned a couple of other resources 10 either considered or deployed. So can you tell me 11 about the others?</p> <p>12 A. The Civil Rights Division was also 13 tasked to investigate certain allegations of 14 violations of protesters' civil rights. So a DOJ 15 Civil Rights official traveled to North Dakota in 16 September of 2016 and conducted some fact-finding 17 following complaints of violations of protesters' 18 civil rights by the pipeline private security 19 personnel and state and local law enforcement.</p> <p>20 Q. Okay. What was the result of -- I'm 21 sorry. Was there something else?</p> <p>22 A. No.</p> <p>23 Q. So was that --</p> <p>24 A. Yeah, no.</p> <p>25 Q. -- all --</p>

December 15, 2022

22:1-27:1
401-402

<p style="text-align: right;">Page 22</p> <p>1 A. And then they just con- -- and they 2 continued to monitor the situation, because there were 3 concerns raised about First Amendment rights being 4 violated and so forth.</p> <p>5 Q. Okay. And what -- was that one 6 individual?</p> <p>7 A. I believe it was one individual. I -- 8 an official, although I don't -- I don't -- I was not 9 involved in that aspect, so I don't have my own -- my 10 own memory of that.</p> <p>11 Q. Okay. Was there any resolution of the 12 investigation, any recommendation that there be any 13 actions taken by DOJ with respect to any of the 14 alleged civil rights violations?</p> <p>15 A. I'm not aware of any charges or -- that 16 were brought in that -- in that instance. I -- but I 17 can't -- I also can't comment on -- on the process, 18 their investigative process, beyond that they did look 19 into these matters.</p> <p>20 Q. Okay. What else?</p> <p>21 A. The other piece was -- I mentioned was 22 the Office of Tribal Justice, whose mission it is -- 23 it's to be the point of contact here at the department 24 for Indian tribes, so -- and to provide advice on 25 legal and policy matters.</p>	<p style="text-align: right;">Page 24</p> <p>1 I think that our considerations in that 2 were, you know, that deploying federal law enforcement 3 assets could actually escalate or de- -- or 4 destabilize the situation and cause more harm than 5 good. So although those requests were certainly 6 considered, deployment of actual federal law 7 enforcement agents or enforcement was not taken for 8 that reason.</p> <p>9 And also they are very -- I would say 10 that federal law enforcement officers are also limited 11 in terms of their jurisdictional authority in that 12 kind of environment where State and local authorities 13 have the main responsibility. And also just a general 14 sort of limitation of funding and -- and numbers 15 available for that type of deployment.</p> <p>16 But, ultimately, our efforts were -- the 17 center of gravity of our efforts were deescalating the 18 situation, and so responding with additional -- 19 additional law enforcement personnel was not the path 20 that we took.</p> <p>21 Q. Right. With respect to law enforcement 22 assistance, the request that was received by the 23 Department of Justice, those were received from the 24 governor of North Dakota, correct?</p> <p>25 A. I believe the request came from -- I</p>
<p style="text-align: right;">Page 23</p> <p>1 So the Office of -- the director 2 traveled to North Dakota in September as well, met 3 with tribal members and protesters, and attended the 4 state command center on a couple of occasions.</p> <p>5 Q. Okay. One individual or more than one?</p> <p>6 A. One individual that I'm aware of, yeah.</p> <p>7 Q. And a few days, is that fair to say, a 8 week or so?</p> <p>9 A. I think that's -- that's probably right.</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. Just give me a moment. No.</p> <p>12 Q. Okay.</p> <p>13 A. Actually, I have one more, yeah. I 14 wanted to -- to mention as well, because I know there 15 was -- there were -- there were requests for law 16 enforcement assistance --</p> <p>17 Q. Yes.</p> <p>18 A. -- so -- so that would -- those were 19 considered as well in terms of considerations.</p> <p>20 We received a request, you know, to 21 assist State and local law enforcement agencies, but 22 also we received requests to protect protesters, you 23 know, who were concerned about civil rights 24 violations. So we were responding to sort of both 25 sides of that.</p>	<p style="text-align: right;">Page 25</p> <p>1 know law enforcement officials in North Dakota. There 2 was a number of letters. There were, I believe, a 3 letter from a member of Congress as well. The 4 North Dakota congressional delegation sent a letter to 5 Attorney General Lynch and others. There was a 6 Jan- -- there was a letter from Sheriff Kirchmeier, 7 and there was a letter from Senator Heitkamp --</p> <p>8 Q. And then also --</p> <p>9 A. -- throughout that time.</p> <p>10 Q. And then also were you aware that 11 Attorney General Lynch had a telephone call that was 12 attended by some officials from North Dakota as well 13 as the State and local?</p> <p>14 A. I recall there were some phone calls 15 made by senior officials. I didn't recall exactly if 16 it was Attorney General Lynch, but that's not 17 surprising that she would engage on the phone with the 18 leaders.</p> <p>19 Q. Okay. And the requests were made 20 directly to her for law enforcement assistance during 21 that call?</p> <p>22 A. I'm not -- I don't have information 23 about exactly what was said on those calls.</p> <p>24 Q. Okay. But ultimately, whether -- 25 whether it was the letters that were received by the</p>

December 15, 2022

<p style="text-align: right;">Page 26</p> <p>1 Department of Justice, from the Congressional 2 delegation, from the sheriff of Morton County, Sheriff 3 Kirchmeier, or if it was with communications with 4 Attorney General Lynch, ultimately the Department of 5 Justice declined to send any law enforcement support 6 with respect to law enforcement officers, right?</p> <p>7 A. I think that -- again, I think support 8 comes in different forms, and so I think the support 9 that we provided was aimed at supporting the law 10 enforcement effort towards a deescalated situation and 11 towards resolving the situation nonviolently and 12 protecting -- and saving lives in that manner.</p> <p>13 Q. I understand what you described as the 14 efforts or the support that was for the resources that 15 the Department of Justice deployed that we discussed. 16 Outside of that, so -- there wasn't any other support 17 provided, correct?</p> <p>18 A. That's all I can recall at this time.</p> <p>19 Q. And -- and with respect to the -- the 20 requests that were received from Sheriff Kirchmeier, 21 Morton County, the Congressional delegation of 22 North Dakota, those requests specifically asked for 23 law enforcement support and not things such as Office 24 of Tribal Justice representatives, the Civil Rights 25 Division, Community Relations Service, or Community</p>	<p style="text-align: right;">Page 28</p> <p>1 enforcement and as well as protesters who were there 2 assembled peacefully.</p> <p>3 Q. (BY MR. KERLIN) The Department of 4 Justice -- well, strike that.</p> <p>5 Who at the Department of Justice made 6 the decision not to send law enforcement officers?</p> <p>7 A. I'm not aware of a single decision-maker 8 on this. Obviously, the top leadership, the Attorney 9 General and the Deputy Attorney General and Associate 10 Attorney General are the top law enforcement officials 11 here, but also there is a -- there are many different 12 arms of the department that were working together to 13 form a consensus around what was the best approach 14 here.</p> <p>15 So I think that -- that's the decision 16 representative of that deliberative process, the 17 outcome of -- of a ser- -- of a lot of consultations 18 and meetings and so forth.</p> <p>19 Q. And so -- just so I'm clear, so it 20 sounds like, and I want to make sure I understand your 21 answer and unpack that a little bit, but that in 22 addition to the Department of Justice, was there other 23 departments that were consulted with and -- and 24 discussed with about whether to send law 25 enforcement -- and I'm specifically talking about law</p>
<p style="text-align: right;">Page 27</p> <p>1 Orienting Policy [sic] Services, right?</p> <p>2 MS. BOBET: Objection, assumes facts not 3 in evidence. You may answer.</p> <p>4 A. I believe the focus of those requests 5 was -- was for law enforcement resources to address 6 the protests and illegal activity, but that's -- that 7 was from the perspective of -- that was the 8 perspective of the request.</p> <p>9 I think the response had -- was, you 10 know -- was informed by the Justice Department's 11 overall mission, which is not simply to -- which is -- 12 which is certainly public safety, front and center, 13 but it also has to consider people's right to peaceful 14 protest.</p> <p>15 The issue of the federal government's 16 relationship with Indian tribes, it has a long 17 history, and there's a trust responsibility there and 18 a responsibility to consult and -- and -- and take -- 19 and listen to those concerns as well.</p> <p>20 And then also the civil -- as, again, 21 the civil -- protecting people's civil rights.</p> <p>22 So I -- we were trying to address many 23 sides to a complex problem, that was playing out on 24 the ground, towards a peaceful end that would -- would 25 ultimately save -- save lives on, you know, law</p>	<p style="text-align: right;">Page 29</p> <p>1 enforcement officers -- to North Dakota to support the 2 law enforcement efforts of the State of North Dakota?</p> <p>3 A. No, no one outside of the Department of 4 Justice, just components of the Department of Justice, 5 who would -- would advise the Attorney 6 General, the Deputy, as to what is a recommended 7 course of action.</p> <p>8 So that would be some of these same 9 offices I had mentioned, the -- you know, the Civil 10 Rights Division, the Office of Tribal Justice, but 11 also ENRB, the Environment Division, that had the 12 litigation.</p> <p>13 So there were a lot of different parts 14 to this -- this particular problem set, and -- and so 15 we were considering all different parts of it, and 16 ultimately, you know, the decision was reached by the 17 department leadership to take the courses of action 18 that we -- that we took.</p> <p>19 Q. Okay. I want to talk to you -- if we 20 bring up 13. "Actions taken by the 21 United States . . . during the DAPL Protests regarding 22 Corps-managed land -- lands used or affected by the 23 DAPL Protests to" -- I'm going to go through each of 24 these, and I would like to know what the Department of 25 Justice did, if anything -- "protect the health and</p>

27:4-28:2
401-40228:5-18
401-40229:19-
30:25
401-402

December 15, 2022

Page 30

1 safety of persons on Corps-managed land."

2 A. So I -- I think that our approach was --
 3 was -- was not focused only on Corps-managed land; it
 4 was focused on where the -- these protests and
 5 protesters and clashes with -- with law enforcement
 6 sometimes were occurring in different locations.

7 So we were concerned with the whole of
 8 the situation, whether that was on State land,
 9 Reservation land, pri -- you know, private land, or
 10 on Corps land.

11 So I think that the actions that we --
 12 we took were meant to protect the health and safety of
 13 persons on Corps-managed lands and -- and elsewhere.

14 Q. Okay. Let me ask it this way: Other
 15 than what you've described when we were talking about
 16 topic No. 10, Community Orienting [sic] Policies --
 17 Policing Services, CRS, Civil Rights Division, and the
 18 Office of Tribal Justice, is it fair to say that there
 19 wasn't anything else that was done by the Department
 20 of Justice to protect the health and safety of persons
 21 on Corps-managed lands?

22 A. I -- I think that I've described, you
 23 know, the different tools that we deployed, but
 24 that -- which were all meant to protect the health and
 25 safety of -- of people in the area.

Page 32

1 outside of -- of most of DOJ's authorities, but yes.
 2 Q. Okay. You mentioned Natural Resources,
 3 I think. Did I have that right? There was somebody
 4 at DOJ with Natural Resources?

5 A. The Environment and Natural Resources
 6 Division was the division that was handling the
 7 litigation by the Standing Rock Sioux Tribe against
 8 the Army Corps of Engineers. So the Army Corps was
 9 our client in that litigation, although the litigation
 10 was related to the pipeline, the legality of the
 11 permitting decisions around the pipeline, not the --
 12 not the decisions about the -- the Corps lands that
 13 were occupied by protesters.

14 Q. Perfect. And we'll get to that a little
 15 later.

16 Okay. So then I want to talk about
 17 three little i's, "prevent unlawful or unsafe
 18 activities on Corps-managed land." Is it the same
 19 answer with respect to little i that you had; that
 20 what you talked about earlier would have been the
 21 actions taken by the Department of Justice?

22 A. Yes.

23 Q. Okay. The next is "clear Corps-managed
 24 land in the first quarter of 2017." Any actions taken
 25 by DOJ to help clear the land of the -- of the

32:16-22
401-40232:23-33:8
401-402

Page 31

1 Q. Right. Understood.

2 And just in the interest of time, I just
 3 want to make sure that we've talked about everything
 4 that the Department of Justice did and that you've
 5 described, and so I just want to make sure.

6 We've covered it with respect to -- I
 7 understand that you're saying that that's a larger
 8 geographical area than the Corps-managed land; that,
 9 you know, the Department of Justice looked at some
 10 bigger picture or something. That's fine and all.

11 But with respect to the actual question,
 12 you've described some of those -- you've described,
 13 and I just want to make sure that I have the
 14 exhaustive list of it, the four things that you
 15 mentioned with response to topic No. 10. Anything
 16 else besides that for this particular --

17 A. No.

18 Q. -- subtopic? Okay.

19 A. Nothing that I can recall.

20 Q. Okay. Little -- two little i's,
 21 "protect Corps-managed lands from environmental harm
 22 or degradation." Is that the same as what you've
 23 previously described would have been the actions
 24 taken?

25 A. Yes. They -- I think that would lie

1 protesters in the camps?

2 A. I believe that Community Relations
 3 Service was involved in assisting the -- the plan --
 4 the State's plan and the Corps' -- the Corps' plan
 5 to -- to evacuate those areas in 2017, so in a way
 6 that would be peaceful and would allow people to get
 7 their property and -- and do that safely. So I think
 8 that there was some assistance from CRS in that.

9 Q. Do you know how many -- do you know how
 10 many individuals were sent to assist with that
 11 process?

12 A. I don't. I think it would have been
 13 primarily in planning and providing technical
 14 assistance, but I don't have a number.

15 Q. And do you know how long they were
 16 there?

17 A. And I don't right off the top of my
 18 head, no.

19 Q. Okay. Let's look at the -- the next
 20 subcategory. It's on the next page. The last one is
 21 "prevent the use of Corps-managed land as a camp,
 22 base, or staging area from which potentially dangerous
 23 or unlawful activities may have been conducted on or
 24 off Corps-managed lands."

25 Is what you described earlier the same,

33:9-18
401-402,
60233:19-
34:10
401-40231:2-17
106; 401-40231:21-32:13
401-402

December 15, 2022

Page 34

1 in other words, the four things that you had mentioned
 2 that the Department of Justice did provide, would that
 3 be the same for this answer, or is there anything else
 4 in addition to that?

5 A. No. Again, I think that our approach
 6 was -- was wider than the Corps-managed land. I think
 7 it was concerned with addressing the issue in a -- in
 8 a way that would have a nonviolent outcome in -- in
 9 all of the -- the areas that -- all the affected areas
 10 there.

11 Q. Okay. I would like to talk to you about
 12 the next topic, which is topic No. 15.

13 "Communications between the United States and with,
 14 to, or from persons on Corps-managed lands related to
 15 the DAPL protests, or representatives or spokespersons
 16 for such persons."

17 Can you tell me about the communications
 18 the Department of Justice would have had with
 19 protesters? And for the purpose of this topic, you
 20 know, you had mentioned one meeting. What -- that's
 21 what the focus is. It's not that someone yelled -- a
 22 protester yelled at someone who was out there and
 23 that's a communication, okay?

24 What I'm -- what I'm trying to focus, on
 25 this, is sit-down discussions. It could be with their

Page 36

1 A. I don't think I -- I don't have specific
 2 knowledge of what discussions were taking place, and I
 3 think that would be part of their -- that would not be
 4 something that I -- I would have a lot of insight into
 5 except that they were fulfilling their role, which is
 6 to listen to tribal leaders and -- but I don't -- with
 7 any -- I don't have any specificity about whether the
 8 permit itself was -- was brought up.

9 Q. Okay. Would that be the same with any
 10 of the requirements for insurance that would have been
 11 part of the application for the special-use permit?

12 A. Again, that would be an Army Corps
 13 decision, not something that our Office of Tribal
 14 Justice would have -- would have much say in or
 15 much -- I don't think that would be the focus of their
 16 discussions.

17 Q. Okay. But if -- if the Corps wanted to
 18 initiate some type of legal action, wouldn't that be
 19 done through the Department of Justice, like it was
 20 with the ER- -- the ENR handling the litigation on
 21 behalf of the Army Corps of Engineer?

22 A. So in terms of where -- I guess to
 23 return to the -- to the topic in terms of the
 24 communications with protesters, I'm just -- I think
 25 this was about tribal -- the Office of Tribal Justice

Page 35

1 leadership or with whomever, but -- but something a
 2 little bit more in depth than just yelling -- you
 3 know, just a casual encounter, if that makes sense.
 4 If it doesn't, let me know, and I'll try and clarify
 5 it a little bit more.

6 A. That makes sense. And I think there was
 7 communication by CRS officials, who on multiple
 8 occasions met with tribal representatives, they met
 9 with protesters and individuals who held themselves
 10 out as -- as leaders of those camps, and other
 11 stakeholders. So those were -- there were
 12 communication with -- with folks in that regard.

13 I would say tribal justice as well
 14 communicated with tribal members directly, some of
 15 whom were involved in protest activity and some of
 16 whom were not, who were just in tribal leadership, for
 17 instance, who had equities in this.

18 Q. For those discussions that was with --
 19 that were with tribal leadership, was there any
 20 discussion by the Department of Justice about the
 21 special-use permit, or the conditions were not being
 22 met of the special-use permit, that the size of the
 23 protests had grown much larger than what was in the
 24 application for the special-use permit, or things like
 25 that?

Page 37

1 meeting with tribal members who -- who were -- some of
 2 whom were and some of who were not involved in -- in
 3 protests. So that would not -- OTJ is not a -- it's
 4 not a litigative arm of the Department of Justice.
 5 It's a point of contact with tribal governments at
 6 DOJ. So that's their -- that's their mission. It's
 7 not to enforce or negotiate litigative -- you know,
 8 litigation.

9 Q. Was there -- were there any requests
 10 made by the Department of Justice through the -- the
 11 different groups that you've mentioned, Tribal Justice
 12 or -- or the others that met with tribal leaders, that
 13 they needed to leave the Corps land? Any requests
 14 made to leave the Corps land?

15 A. I'm not aware of the substance of those
 16 discussions.

17 Q. Okay. Let's do this: Let's talk about
 18 number -- let's move on to No. 20, please.

19 A. Okay. I would -- just to com- -- I'm
 20 sorry. If I could -- just to complete the response, I
 21 would say also the Civil Rights officials were
 22 communicating with protesters in the course of their
 23 investigations and potential violations of protesters'
 24 civil rights. So that would be one more contact, you
 25 know, direct contact, communications with protesters.

December 15, 2022

Page 38

1 Q. Okay. Just to kind of close that out,
 2 with respect to any of the contents of those
 3 communications that you mentioned, the details of it,
 4 if there was any requests made by the Department of
 5 Justice that, you know, "Hey, we respect your civil
 6 right, but you can't stay here because you don't have
 7 a permit," if there was any such discussions like
 8 that, you're not aware of those, correct?

9 A. I'm not. I'm not. I would -- yeah, I
 10 would just add that -- that also -- I mean, there
 11 were -- there were Main Justice attorneys who were
 12 responsible for the litigation with the tribe that
 13 had, you know, communications with counsel for the
 14 tribe, to the extent that those attorneys for the
 15 tribe are considered representatives of protesters, so
 16 I just wanted to mention that.

17 Q. Okay. All right. Let's talk about
 18 topic No. 20, "Decisions by the United States to
 19 provide or withhold law enforcement assistance to
 20 State and local authorities during the DAPL protests."

21 We've talked a little bit, I think,
 22 about this in a prior topic. Do you have anything to
 23 add to this with respect to the decision by the
 24 Department of Justice to provide or withhold law
 25 enforcement assistance to State and local authorities

38:17-39:7
401-402

Page 39

1 during the DAPL protests?

2 A. No. I believe I covered it in my
 3 earlier answers; that the -- that the focus was to
 4 defuse tensions and to deescalate, and there was a
 5 concern that additional law enforcement resources,
 6 federal law enforcement, could destabilize the
 7 situation.

8 Q. Okay. Did that perspective that DOJ
 9 had, did that change over time? In other words, early
 10 on in the protests, was that a concern, and was that
 11 less of a concern, you know, closer to the end of the
 12 protests in February? Or was that the same decision
 13 from beginning to end by Department of Justice: "If
 14 we send any law enforcement support, such as uniformed
 15 officers or something like that, it will make -- we
 16 believe it will make the situation worse, so we're not
 17 going to do that?"

18 A. I don't -- I don't believe we did. I
 19 think by the time winter -- you know, it was
 20 January and February, I think, the pro -- the size
 21 had -- had diminished significantly, and -- of
 22 the protests, and there -- the focus was on the safe
 23 evacuation of the remaining, you know, protesters in a
 24 way that was orderly and safe.

25 Q. And -- and I take it because law

Page 40

1 enforcement support -- and by that I mean officers --
 2 were never sent by the Department of Justice, that
 3 decision remained the same, correct? In other words,
 4 at the beginning, "We're not going to send it," at the
 5 end, "We're not going to send it." And is the reason
 6 why is that the concern was that the Department of
 7 Justice thought it would somehow increase tensions?

8 A. I would say that that's correct. I
 9 can't -- I think by the time it was late, you know,
 10 December, January, and February, again, it was not the
 11 same -- the public safety aspect of it was less in
 12 terms of direct clashes, and it turned to the
 13 eventual -- you know, the de- -- the deescalation and
 14 the eventual evacuation of -- of the area, to --

15 Q. Did the --

16 A. -- for the safety of everybody.

17 Q. Did the Department -- excuse me. I
 18 didn't mean to interrupt.

19 Did the Department of Justice ever
 20 direct any other agency not to send law enforcement
 21 support, such as the Department of Homeland Security?
 22 A. Not that I'm aware, no. And we -- we
 23 wouldn't -- the Department of Justice wouldn't be able
 24 to direct Homeland Security in that fashion. I don't
 25 know if Homeland Security received separate requests

Page 41

1 and -- or how that was handled.

2 Q. Okay. All right. We're going to -- I
 3 want to talk to you a little bit -- we can take this
 4 down.

5 Mr. Hornbuckle, I want to talk to you a
 6 little bit -- I want to -- I jumped right into the
 7 topics. I want to take a step back and talk to you a
 8 little bit about your background and your involvement
 9 with the Department of Justice and your employment
 10 with the Department of Justice.

11 So briefly could you tell me what your
 12 educational background is?

13 A. Sure. I have a bachelor's of the arts
 14 degree in -- I was a history major. I went to
 15 Birmingham-Southern College. And I have a master's of
 16 public administration from Binghamton University in --
 17 in Upstate New York. And I recently completed a
 18 master's of science at the National War College in --
 19 in the National Defense University in 2021. I was the
 20 class of 2021.

21 Q. Congratulations.

22 A. Thanks.

23 Q. Any particular focus for that master's
 24 of science?

25 A. I focused on -- it's a -- the focus is

39:25-40:16
401-402

December 15, 2022

<p style="text-align: right;">Page 42</p> <p>1 national security strategy formulation, but I focused 2 on China and -- and some other information strategies, 3 influence strategies.</p> <p>4 Q. Okay. When did you -- after -- 5 Well, let me start this way, because you 6 did seem like you've had some education as you've been 7 employed as well, and usually I kind of take this and 8 say, "After your education, where did you work," but 9 you've been working during the same time, it sounds 10 like.</p> <p>11 What was your first job in your 12 professional career?</p> <p>13 A. My first job was a newspaper journalist 14 for two years, back in -- and then I joined the U.S. 15 Foreign Service. I was a Foreign Service officer for 16 seven years for the Department of State.</p> <p>17 And then in 2006, I joined the Justice 18 Department at the U.S. Attorney's Office in Arizona 19 for four years as a public affairs and a law 20 enforcement coordination specialist there.</p> <p>21 And then in 2010, I came to Main 22 Justice, to the Office of Public Affairs.</p> <p>23 Q. Okay. And you've been there since?</p> <p>24 A. Yes.</p> <p>25 Q. And then let's just start in 2010, your</p>	<p style="text-align: right;">Page 44</p> <p>1 another career official here.</p> <p>2 Q. Okay. So as Deputy Director of Public 3 Affairs in the 2016 time period, so during these DAPL 4 protests, what was your role? Like what -- what did 5 you do?</p> <p>6 A. So in addition to being a public affairs 7 specialist or a spokesman -- spokesman for the office, 8 I have the portfolio of Native American issues, so 9 American Indian and Alaska Native affairs issues. So 10 that was since about 2012, I think, I've had that 11 portfolio, and so I just carried that into that role. 12 But also as deputy, I would -- I would also be 13 expected to work with our leadership offices to solve 14 complicated problems, you know, communications 15 problems such as this. So that's what -- it grew out 16 of that role of dealing with Native American issues. 17 I worked on Native American issues in Arizona a lot as 18 well, so I had a -- I just have a lot of background in 19 the area.</p> <p>20 Q. And prior to the DAPL protests, would 21 you ever have occasion to prepare press releases?</p> <p>22 A. Yes.</p> <p>23 Q. Is that something that you did in -- and 24 I'm going to describe it as the ordinary course of 25 your business?</p>
<p style="text-align: right;">Page 43</p> <p>1 titles. So when you first joined Main Justice Public 2 Affairs, what was your title?</p> <p>3 A. I was a public affairs specialist.</p> <p>4 Q. Has that changed over the years?</p> <p>5 A. In 2014, I was promoted to be the -- the 6 Deputy Director of Public Affairs, so the career 7 deputy here.</p> <p>8 Q. Is that what you -- do you still have 9 that same role today?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. As Deputy Director of Public 12 Affairs, who do you report to?</p> <p>13 A. I report to the -- to the Director of 14 Public Affairs.</p> <p>15 Q. And in 2016 and 2017, who would have 16 that been?</p> <p>17 A. At the end of 2016, I believe we had an 18 acting director. I know Kevin Lewis, I worked a lot 19 with, because our director was on maternity leave, I 20 think, at the end. The director was Melanie Newman.</p> <p>21 And then -- and then when the 22 administration changed, the first director, but I 23 don't think she came until Aug. -- until March -- 24 March, was Sarah Flores, so there was an acting 25 director, Peter Carr, in January and February, who was</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. Prior to the DAPL protests, did you 3 ever -- were you ever involved with preparing a press 4 release that would involve more than one agency?</p> <p>5 A. Yes. On occasion, yeah.</p> <p>6 Q. And what would be an occasion that -- 7 that you would prepare a press release that might 8 involve more than one agency?</p> <p>9 A. It could be any number of occasions 10 where -- where something is done in partnership with 11 other agencies, or is something that -- where we're 12 speaking with one voice with other executive agencies.</p> <p>13 So that could be a law enforcement 14 operation with, you know, the DEA or the BIA or 15 something of that nature, or it could be something 16 with the Environmental Protection Agency that -- where 17 they have a lot of interest in -- in the issue and 18 want to be involved in -- in that.</p> <p>19 So, yes, it's -- it's not our everyday 20 process, but it's not uncommon.</p> <p>21 Q. Okay. And there's two joint statements 22 that were -- that I want -- that we're going to 23 specifically talk about today, but that were issued by 24 the Department of Justice, Department of the Interior, 25 and the Department of the Army, one on September 9,</p>

44:20-
45:20
401-402

December 15, 2022

Page 48

1 2016, and the other on October 10, 2016. Are you
 2 familiar with those joint statements?

3 A. Yes, I am.

4 Q. And -- and are those joint statements
 5 the type of statement that you are kind of describing
 6 when you said "in partnership with other agencies" and
 7 so that, I guess, the United States is speaking with
 8 one voice on an issue?

9 A. Yes.

10 MR. KERLIN: Okay. I tell you what,
 11 it's a little short of an hour, but I think I'm going
 12 to go ahead and take a break at this point, if we
 13 could, and just maybe come back at 11 o'clock.

14 THE DEPONENT: Okay. Sure. That --
 15 that works for me.

16 THE VIDEOGRAPHER: Going off the record.
 17 The time is 4:51 p.m. UTC, 9:51 a.m. Mountain.
 18 (Recess taken 9:51 a.m. to 10:02 a.m.
 19 Mountain Standard Time.)

20 THE VIDEOGRAPHER: We're back on the
 21 record. The time is 5:02 p.m. UTC, 10:02 a.m.
 22 Mountain.

23 Q. (BY MR. KERLIN) Mr. Hornbuckle, we're
 24 back after a short break. Are you able to continue?

25 A. Yep, I'm ready.

1 certain news articles that report on the situation
 2 as -- as it's progressing so we have an awareness of
 3 that external environment.

4 Q. Okay. So I want to go through some of
 5 the individuals that are on the distribution list. So
 6 there's a lot of individuals from the Department of
 7 Justice. In addition to it, if we can -- we're going
 8 to go down to probably about halfway through it,
 9 there's an individual, Tommy Beaudreau, and then
 10 Michael Connor. Do you see those?

11 MS. BOBET: While we're looking for
 12 those, Paul, can you point me towards which topic in
 13 particular this pertains to?

14 A. Okay.

15 MR. KERLIN: This one? Yeah, this is
 16 going to relate to the Court's ruling. It's "Judge
 17 Grants Partial Stop on North Dakota Pipeline Work," so
 18 I believe this is the run-up to the September 9
 19 statement.

20 A. So I see it. I see it now, yeah.

21 Q. (BY MR. KERLIN) Okay.

22 MS. BOBET: Note that this is within
 23 our -- are you talking about topic 21?

24 MR. KERLIN: Yes.

25 MS. BOBET: Okay. I don't know if this

Page 49

1 Q. Okay. If we can bring up -- it's the
 2 document labeled ARMY 28388, please.

3 And I would like to label it as the next
 4 exhibit. I'm not certain what exhibit we're up to.

5 THE REPORTER: I believe on Tuesday we
 6 introduced Exhibit 849.

7 MR. KERLIN: Okay. Thank you. So we'll
 8 call this 850.

9 (Deposition Exhibit 850 was remotely
 10 introduced.)

11 Q. (BY MR. KERLIN) Mr. Hornbuckle, I have
 12 an email on your screen. Can you see that?

13 A. Yes, I can.

14 Q. Okay. The date of it is September 6 of
 15 2016. It's from you, and it's to a very large --
 16 large distribution list. Do you see that?

17 A. Yeah. Yes, I do.

18 Q. My question is -- and -- and if we could
 19 scroll down to the -- what was sent. Why did you send
 20 this email?

21 A. Well, in the course of my duties, this
 22 is just something I would -- I would normally do when
 23 something had attracted a lot of publicity and a lot
 24 of people were watching it. That's something that
 25 involves -- Public Affairs would do, would circulate

1 is within our understanding or prior conferral about
 2 topic 21, but it sounds like the questions are -- are
 3 about Mr. Hornbuckle's own knowledge, at least so far,
 4 so he can continue to testify for himself about this.

5 Q. (BY MR. KERLIN) Okay. Mr. Hornbuckle,
 6 and for this question and for this document, in your
 7 personal capacity, do you -- I'm asking for -- not
 8 necessarily you in the representative capacity.

9 Tommy Beaudreau, is he with the
 10 Department of the Interior?

11 A. I don't recall him, yeah, but,
 12 obviously, he is in this instance because he says
 13 he -- the Interior Office of the Secretary, Department
 14 of Interior, that's how I read the -- the -- the email
 15 address.

16 Q. Yeah. The next one is Michael Connor.
 17 Do you know who Michael Connor is?

18 A. You know, it's been a long time, so if I
 19 did interact with him, I don't -- I don't recall him
 20 specifically.

21 Q. If you go down two more lines, there's
 22 Darren Cruzan with BIA. I believe that's the Bureau
 23 of Indian Affairs. Do you see that?

24 A. Yes.

25 Q. Okay. Jo-Ellen Darcy is the next one

49:5-

50:10;

50:18-21

401-402;

602

December 15, 2022

Page 50

1 with the Army. Do you see that?
 2 A. Yep, I see that.
 3 Q. Okay. There's another, Jody Cummings
 4 with the Department of the Interior. Do you see that
 5 one?

6 A. Yes.
 7 Q. Okay. Rosa Salamanca, who is Rosa
 8 Salamanca?
 9 A. She is with CRS. I believe she's a -- a
 10 conciliator with CRS, but I'm not positive.

11 Q. Okay. Was she the individual, when you
 12 were talking about CRS, that went into the -- went
 13 into the camps and spoke with the -- with the Native
 14 Americans?

15 A. I'm just not sure. I don't have
 16 specific information about who -- who was in those
 17 meetings.

18 Q. If we keep going down, there's a couple
 19 more on here. There's a Lowry Crook. Do you know who
 20 Lowry Crook is?

21 A. Just from email traffic.

22 Q. Okay. My question is, why is someone at
 23 the Department of Justice sending out --

24 You know, it makes sense for you to send
 25 it to the Department of Justice, but this distribution

Page 51
 1 list is much broader than that and includes other
 2 agencies, okay? Do you know why you were sending this
 3 out to such a broad distribution group?

4 A. You know, I don't recall sending this
 5 particular email. It's -- it's quite possible that I
 6 simply replied all to a -- to a previous email that --
 7 that had a lot of interested parties, and so it was
 8 just spreading information.

9 It's public information. It's an ABC
 10 news story, so it's not something I would -- I would
 11 be very concerned that it remained within the
 12 department because it's just public-facing public
 13 information.

14 Q. Okay. Do you recall if you had a
 15 particular distribution list that you had prepared to
 16 disseminate information about the DAPL protests or the
 17 Court's rulings on any of the -- for instance, the
 18 DAPL pipeline?

19 A. I -- I don't recall originating a list.
 20 I think there were a number of threads that I would
 21 have been on in -- in some of these communications, so
 22 I might have utilized those to just reach, you know,
 23 the people I need to.

24 If I was originating something that was
 25 purely within the department, I would have just -- I

Page 52

1 would have included many of these folks who were
 2 within the department, but I -- I don't -- I don't
 3 recall creating a list specifically for this, but
 4 it's -- it's possible. And I don't think this -- I
 5 doubt this list, though.

6 Q. If we can bring up MYERS 10012. And
 7 we'll label this 851.
 8 (Deposition Exhibit 851 was remotely
 9 introduced.)

10 Q. Mr. Hornbuckle, this is a -- it looks to
 11 be an invitation for a -- for a, I guess, call-in
 12 invitation for a conference call or something of that
 13 nature. The date of this one is September 9 [sic] of
 14 2016, and for required attendees, you're the first one
 15 on the list.

16 Do you recall having a -- having either
 17 an occasional call or a standing call where there
 18 would be a discussion amongst a number of different
 19 individuals at DOJ, the FBI, and others about the --
 20 about the DAPL protests?

21 A. Well, looking at the date -- well, we
 22 would have had periodic calls on something of this
 23 nature to share information and to coordinate.

24 But this one, it was on, it looks like,
 25 September 7, and this was after the Labor Day weekend,

52:8-
 53:13
 401-402;
 602; 802

Page 53
 1 as I recall, when there were some videos that came out
 2 where protesters were involved in an altercation with
 3 some private security detail, and it was on --
 4 captured on video where there were dogs involved,
 5 canine security.

6 And so that was, I believe, one of the
 7 precipitations of the need to -- that this was -- had
 8 created, you know, a lot of concern about -- again
 9 about things escalating in -- in that area, so there
 10 was a desire to communicate.

11 So that's my -- that's my guess, but
 12 this would not be unusual to have a conference call on
 13 something of this nature.

14 Q. Any discussion about the -- either the
 15 ruling by Judge Boasberg to temporarily halt the DAPL
 16 construction pipeline, or the soon-to-be-released
 17 ruling by Judge Boasberg about the request for a
 18 temporary injunction?

19 MS. BOBET: I'll object here to the
 20 extent the question is calling for the substance of
 21 communications involving attorneys in the context of
 22 litigation or -- or where legal advice might have been
 23 provided. That substance is privileged, and I'll
 24 instruct Mr. Hornbuckle not to answer.
 25 If it's not calling for the substance,

53:14-18
 401-402;
 501;
 602; 802

December 15, 2022

ND OBJ.:
As to 53:19-54:1,
includes the
argument of
counsel

54:12-16:
401-402

<p>Page 54</p> <p>1 then you may answer aside from that.</p> <p>2 A. Okay. Aside from that, I mean, and this</p> <p>3 was certainly in the time frame between -- you know,</p> <p>4 leading up to Judge Boasberg's ruling on the 9th. So</p> <p>5 I don't know if that -- again, I'm not going to</p> <p>6 comment on the substance of that discussion. For one,</p> <p>7 I don't -- I don't have a recollection of exactly --</p> <p>8 of that -- this particular call.</p> <p>9 But this is not unusual for us to talk</p> <p>10 about the various aspects and the updates of the</p> <p>11 things that had occurred, the facts.</p> <p>12 Q. (BY MR. KERLIN) Okay. And just so I'm</p> <p>13 clear, you wouldn't have been providing any legal</p> <p>14 advice, right? I mean, you're a Department of Justice</p> <p>15 employee, but you're not an attorney, right?</p> <p>16 A. That's correct.</p> <p>17 Q. All right. Let's pull up MYERS 43796,</p> <p>18 please.</p> <p>19 (Deposition Exhibit 852 was remotely</p> <p>20 introduced.)</p> <p>21 Q. Mr. Hornbuckle, this is another email</p> <p>22 from you to a number of individuals at various</p> <p>23 agencies. It's dated September 7, 2016, at 4:21 p.m.</p> <p>24 Can you see that on your screen?</p> <p>25 A. Yes, I can.</p>	<p>Page 56</p> <p>1 President Obama on one of these links, correct?</p> <p>2 A. I don't recall which -- which link, but</p> <p>3 I think that -- yeah, so I think just some of the</p> <p>4 articles must have captured his -- his comments.</p> <p>5 Q. If we look at the first link, it appears</p> <p>6 to be a C-SPAN video, and then it says</p> <p>7 "obama-dakota-access-pipeline." Do you see that?</p> <p>8 A. Uh-huh, yeah.</p> <p>9 Q. Okay.</p> <p>10 A. That might have been it.</p> <p>11 Q. So we're going to go to the next</p> <p>12 document, and this is going to be back to your</p> <p>13 representative capacity, I believe. ARMY 117974.</p> <p>14 We'll make this Exhibit 853.</p> <p>15 (Deposition Exhibit 853 was remotely</p> <p>16 introduced.)</p> <p>17 Q. Okay. This is an email chain. We can</p> <p>18 start at the end and work our way up. I'll tell you</p> <p>19 there's not a whole lot of substance on it that I'm</p> <p>20 going to be able to discuss with you because it's been</p> <p>21 redacted.</p> <p>22 But at the bottom, if we go to the</p> <p>23 bottom, or at least the last -- there's a Hilary</p> <p>24 Tompkins, Solicitor, Office of the Solicitor,</p> <p>25 Department of the Interior. Do you know who she is?</p>
---	---

55:12-56:10
401-402; 602;
802

<p>Page 55</p> <p>1 Q. I'm going to go ahead and label this</p> <p>2 852. And --</p> <p>3 MS. BOBET: And is this -- again, is</p> <p>4 there a nexus to topic 21 for this document or is</p> <p>5 this --</p> <p>6 MR. KERLIN: No.</p> <p>7 MS. BOBET: -- another instance where he</p> <p>8 can testify in his personal capacity?</p> <p>9 MR. KERLIN: This will be his personal</p> <p>10 capacity for this document.</p> <p>11 MS. BOBET: Okay.</p> <p>12 Q. (BY MR. KERLIN) Mr. Hornbuckle, the</p> <p>13 substance of your email says, "Below are some recent</p> <p>14 articles on the protests, et cetera, including a</p> <p>15 statement by President Obama answering a question</p> <p>16 during his trip to Laos." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And by this distribution, you</p> <p>19 were making everyone aware of President Obama's</p> <p>20 comments on the DAPL protests that he made in Laos,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And -- and you -- and you mention</p> <p>24 on here -- or it's one of the links that you have</p> <p>25 included, but it actually includes the comments of</p>	<p>Page 57</p> <p>1 A. Yes. She was the Solicitor -- Solicitor</p> <p>2 at the time.</p> <p>3 Q. Okay. Then if we go up to the next</p> <p>4 page, there's Sam Hirsch. Do you know who Sam Hirsch</p> <p>5 is?</p> <p>6 A. Yeah, I know Sam.</p> <p>7 Q. Principal Deputy Assistant Attorney</p> <p>8 General, Environmental and Natural Resources Division?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you know if Mr. -- if Sam</p> <p>11 Hirsch was the person with the Department of Justice</p> <p>12 that was involved representing the Army Corps of</p> <p>13 Engineers in the litigation that the Standing Rock</p> <p>14 Sioux Tribe had initiated to try and stop construction</p> <p>15 of the DAPL pipeline?</p> <p>16 A. Sam was the principal deputy, so he</p> <p>17 would have been the number-two official in the ENRD at</p> <p>18 the time. So his -- he would have been over the</p> <p>19 litigation team that was handling the DAPL case. But</p> <p>20 he wouldn't have been -- personally he wouldn't have</p> <p>21 been on the case team, necessarily, but certainly in</p> <p>22 charge.</p> <p>23 Q. Okay. And then the substance has been</p> <p>24 redacted, so I don't have anything to ask you there</p> <p>25 because I don't have it.</p>
--	--

56:11-14;
56:22-59:7
401-402;
403; 501;
802

December 15, 2022

Page 58

1 If we go up a page, the start of his --
 2 his email. So it's Friday, September 9, at 10:02 a.m.
 3 And it says -- just for the start, it says, "Dear
 4 Corps, Interior, and Justice colleagues," and then
 5 everything else is redacted. Do you see that?

6 A. Yes.

7 Q. Okay. When we go above -- at the top of
 8 that page, it's an email from -- from Hilary Tompkins.
 9 The cc list is extremely long, so I'm not going to go
 10 through all of that. But the subject is "Re: Final
 11 Drafts of Statements." Do you see that?

12 A. Uh-huh.

13 Q. Okay. Again, the substance is redacted,
 14 so I -- but it does look like you're on that
 15 particular distribution, okay?

16 A. Okay.

17 Q. All right. And we'll go back one more
 18 page, and now we're back at the top.

19 Oh, I'm sorry, there's one more I missed
 20 in between. There's an email from Sam Hirsch, and
 21 then it says "Final Drafts," and it says, "Thanks,
 22 Sam." Again, it's redacted. I don't have anything to
 23 ask you there because I can't see it.

24 And then at the top is your email. I
 25 don't know if it's in reply to everyone -- it looks

Page 59

1 like it might be -- on the prior email, that is.
 2 And it says, "Some news coverage," and
 3 then it mentions the "key-ruling-dakota-access-
 4 pipeline-due-end-of-friday," and -- in the link, that
 5 is, so there's a link to an article that you sent out.
 6 Do you see that?

7 A. Yep.

8 Q. Okay. So I want to talk to you about
 9 the September 9, 2016, statement. Who drafted the --
 10 the initial statement to that -- that --
 11 And we can pull up -- just so that we're
 12 clear, make sure we're talking about the same thing,
 13 if we pull up Exhibit -- I think it's 494.

14 This is the statement. It continues on
 15 to the next page, okay? You're familiar with this
 16 particular statement, correct?

17 A. Correct.

18 Q. Okay. So I --

19 When did you first hear about
 20 preparation of a joint statement?

21 A. So I think I received a draft of this --
 22 the initial statement around the 7th, or late on the
 23 7th, or the 8th, or the morning of the 8th.

24 Q. Okay. Who prepared the first draft?

25 A. I don't know who prepared the first

Page 60

1 draft. I received it as a -- as a -- as a draft from
 2 the Associate Attorney General's office, which was
 3 over ENRD; and then -- and then it was circulated with
 4 a number of offices for input or -- or review.

5 Q. Did the Department of Justice prepare
 6 the initial draft, or the Department of the Interior,
 7 or the Department of the Army?

8 A. I -- I don't know who prepared the --
 9 the initial draft. I received it from within the
 10 department, and then -- and then it was shared with --
 11 with the Army and with the U.S. Attorney's Office and
 12 other parts of the department for input and -- and
 13 information over -- over the course of, you know, the
 14 next day, the 8th.

15 Q. Whose idea was it to prepare the joint
 16 statement?

17 A. I don't think it -- the idea originated
 18 with any one person. I think that we understood a
 19 ruling was -- was imminent, and there was a desire to
 20 have -- to address it in a way that would inform
 21 people what had happened and to also promote -- try to
 22 defuse tensions, talk about the action -- the review
 23 that was taking -- that the Army would -- was
 24 continuing to conduct.

25 So the overall, you know, intent was

Page 61

1 to -- to inform the public, defuse tensions, talk
 2 about how the government was addressing these issues,
 3 and -- and therefore explain, communicate this so
 4 that -- in a way that would help promote nonviolence.

5 Q. From the Department of Justice, who was
 6 involved in reviewing and commenting on the draft
 7 statement?

8 A. There were a number of people. There
 9 was certainly Sam Hirsch in the Office of the
 10 Associate -- in the Office of Associate Attorney
 11 General, the COPS Office, CRS, OTJ, the
 12 U.S. Attorney's Office in -- in North Dakota, and
 13 others. I could give you a little bit more -- more of
 14 a list, if you would like.

15 Q. Who from North Dakota?

16 A. That would have been Chris Myers. He,
 17 you know --

18 Q. Okay.

19 A. -- as the -- as the U.S. Attorney at the
 20 time.

21 Q. Just to be clear, the Department of
 22 Justice didn't get input or comment from anyone from
 23 the State of North Dakota or any State or local
 24 officials that were actually out there where the
 25 protests were occurring; is that correct?

59:24-62:5:
401-402; 403

December 15, 2022

<p style="text-align: right;">Page 62</p> <p>1 A. That's correct, but -- but, again, 2 not -- not unusual. This would be a -- our response 3 to -- to a federal court ruling, so something we would 4 coordinate among the federal partners who -- who -- 5 involved in this issue, but not necessarily others.</p> <p>6 Q. Okay. Any consideration that the 7 Department of Justice had regarding the impact that 8 this statement would have on the protesters to 9 embolden them?</p> <p>10 A. I think the concern was actually to -- 11 the concern and the intent of the statement was to the 12 contrary. It was not -- it was meant to dial things 13 down, to -- to communicate that there was an ongoing 14 review, to call for a pause in pipeline construction 15 near the lake, which was the source of -- of the major 16 concerns raised by the protesters and the tribe, 17 and -- and to -- so to deescalate tensions, not to -- 18 to escalate or prolong or -- things.</p> <p>19 Q. So the Department of Justice, the 20 Environmental and Natural Resources Division, 21 represents the Army Corps of Engineers, okay, in this 22 litigation, right?</p> <p>23 A. Correct.</p> <p>24 Q. As part of representing the Army 25 Corps of Engineers, they are defending the Army</p>	<p style="text-align: right;">Page 64</p> <p>1 Pipeline in particular, but also about pipeline 2 decision-making more broadly, and -- and to announce 3 these -- a series of consultations toward that end. 4 So it had -- it had a purpose that went 5 beyond just the -- the -- explaining the litigation 6 position or status.</p> <p>7 Q. (BY MR. KERLIN) While I appreciate -- 8 while I appreciate your answer, I just want to make 9 sure that it's clear, the Department of Justice, 10 through its division with Environmental and Natural 11 Resources, was pushing for a particular position, and 12 that was that the Army -- defending the Army Corps of 13 Engineers' decisions and what had happened in order to 14 get the pipeline to the point it was so that it could 15 be appropriately permitted and constructed, right?</p> <p>16 A. From that -- from a litigation 17 standpoint, correct.</p> <p>18 Q. Yes. Okay. And now this joint 19 statement is being issued after the Department of 20 Justice won; they got the ruling that they were 21 seeking. They are now issuing a statement with two 22 other agencies that are a contra- -- that is in -- 23 it's directly contradictory to the ruling they just 24 got from the Court, correct?</p> <p>25 MS. BOBET: Objection, misstates</p>
<p style="text-align: right;">Page 63</p> <p>1 Corps of Engineers' decision in the litigation, that 2 everything was done appropriately, and urging 3 Judge Boasberg to deny the request for a temporary 4 injunction so that the pipeline would not -- the 5 construction would not be stopped. That's their 6 position in the case, correct?</p> <p>7 A. That was the --</p> <p>8 MS. BOBET: Objection, assumes facts not 9 in evidence. You may answer.</p> <p>10 A. That was the litigation -- that was the 11 litigation position. I think that this was -- this 12 issue was not just playing out in the courtroom, 13 though. It was playing out as a much more complex 14 problem on the ground that involved imminent public 15 safety concerns and -- and other First-Amendment- 16 protected activities, and large numbers in tribal -- 17 and tribal members and leaders, who were -- who were 18 clearly upset with this situation.</p> <p>19 So the idea here was to meet that 20 concern and -- and to -- to inform people of the 21 decision, but also to inform of other actions, beyond 22 just the litigation position, that the United States 23 was going to undertake to address the -- the issues 24 that had been raised by Standing Rock and by other 25 tribes about pipeline -- about the Dakota Access</p>	<p style="text-align: right;">Page 65</p> <p>1 evidence, calls for a legal conclusion. You can 2 answer.</p> <p>3 A. Right. Beyond the -- the legal 4 consideration, I think that because of the -- I mean, 5 the history of the relationship between -- between the 6 federal and state governments, frankly, and private 7 industry with --</p> <p>8 Q. (BY MR. KERLIN) I hate to cut you off, 9 Mr. Hornbuckle.</p> <p>10 A. Yeah.</p> <p>11 Q. I don't mean to. We have limited time 12 here. I only have about 30 minutes left with you, and 13 so I'm going to have to insist on direct answers to my 14 questions and not a lot of explanation that may or may 15 not, and likely isn't, responsive to my question, 16 okay?</p> <p>17 A. Okay.</p> <p>18 Q. My question --</p> <p>19 A. Could you repeat the question?</p> <p>20 Q. I can, if -- if you would please answer 21 it.</p> <p>22 So the Department of Justice takes the 23 position, as they are defending the U.S. Army Corps of 24 Engineers in their decision-making process, to say, 25 "Deny the temporary injunction. Construction should</p>

62:19-63:6;
63:10-64:17;
401-402; 611;
outside scope
of 30(b)(6)
notice

December 15, 2022

ND OBJ.:
Includes argument of counsel

66:16-68
401-402; 611;
701/702 calls for legal concl.;
802

ND OBJ.:
Includes argument of counsel

<p style="text-align: right;">Page 66</p> <p>1 continue."</p> <p>2 The judge rules in their favor, correct,</p> <p>3 and says, "No temporary injunction issued.</p> <p>4 Construction can continue," correct?</p> <p>5 A. Correct.</p> <p>6 Q. And then the Department of Justice</p> <p>7 issues, along with two other agencies, this statement</p> <p>8 that is contradictory to that and says, "Well, the</p> <p>9 judge didn't pause it. Now we, in fact, are going to</p> <p>10 tell the pipeline construction company that it should</p> <p>11 be paused." "Voluntarily paused" is the words that</p> <p>12 are used in this statement, correct?</p> <p>13 MS. BOBET: Objection, misstates</p> <p>14 evidence.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MR. KERLIN) Okay. So the victory</p> <p>17 that the protesters did not get in court, the</p> <p>18 Department of Justice and the Department of Army and</p> <p>19 the Department of the Interior gave them in this</p> <p>20 statement that we're looking at as Exhibit 495 -- 4,</p> <p>21 correct?</p> <p>22 MS. BOBET: Objection, calls for</p> <p>23 speculation, calls for a legal conclusion, and</p> <p>24 argumentative.</p> <p>25 Q. (BY MR. KERLIN) Correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 that clearly many people in the tribe did not agree</p> <p>2 had been addressed adequately.</p> <p>3 So that's -- I think that was -- that</p> <p>4 was the issue.</p> <p>5 Q. Are you finished?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you know whether or not all</p> <p>8 those issues that you just mentioned about whether or</p> <p>9 not the -- that there was an adequate consultation</p> <p>10 process, if all those issues were brought up by the</p> <p>11 Standing Rock Sioux Tribe in the litigation in front</p> <p>12 of Judge Boasberg so that he could consider it before</p> <p>13 he made his ruling?</p> <p>14 A. I don't -- I don't feel like I'm in a</p> <p>15 position to -- to -- to lay out all the legal factors</p> <p>16 that were considered by Judge Boasberg in the</p> <p>17 litigat- -- or to -- to really talk versantly about</p> <p>18 the litigation itself.</p> <p>19 Q. Did Judge Boasberg issue a ruling that</p> <p>20 provided for a voluntary pause on all construction?</p> <p>21 A. I think he -- he issued a ruling based</p> <p>22 on -- on the facts before him in the litigation, so I</p> <p>23 couldn't recall --</p> <p>24 Q. And I think -- and I think you'll agree</p> <p>25 with me that the Department of Justice did not urge</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I -- I would not -- I would not assess</p> <p>2 this and the statement in that way, that it was</p> <p>3 putting forth a contrary -- the position or -- I think</p> <p>4 that it was calling -- calling for a voluntary pause</p> <p>5 while some of these issues were considered.</p> <p>6 And I think the tribe had directly</p> <p>7 challenged whether the -- whether the -- whether the</p> <p>8 Army had -- had done an adequate consultation. And</p> <p>9 that that -- when that is an issue, other -- you know,</p> <p>10 the -- there are -- there are other equities at play</p> <p>11 in the department: One is -- is this trust</p> <p>12 relationship with tribes and making -- ensuring that</p> <p>13 we are consulting appropriately.</p> <p>14 And so I think that that prompted the --</p> <p>15 the need for additional review because of the public</p> <p>16 safety concern. I think that a voluntary pause was</p> <p>17 considered an appropriate thing to call for to</p> <p>18 settle -- to defuse the situation and -- and give us</p> <p>19 more time to -- to deescalate and consider all -- all</p> <p>20 of these issues involved.</p> <p>21 So I don't think it was stating a</p> <p>22 contrary position or reversing. I think it was -- it</p> <p>23 was a strategic maneuver to try to defuse the public</p> <p>24 safety crisis at the time and to also do the right</p> <p>25 thing in terms of addressing some of these concerns</p>	<p style="text-align: right;">Page 69</p> <p>1 Judge Boasberg to issue a ruling that called for a</p> <p>2 voluntary pause of all construction activity. Is that</p> <p>3 correct?</p> <p>4 MS. BOBET: Objection, assumes facts not</p> <p>5 in evidence.</p> <p>6 Q. (BY MR. KERLIN) Is that what the</p> <p>7 Department of Justice was asking Judge Boasberg to do?</p> <p>8 A. I think that -- you know, I think that</p> <p>9 the statement clearly notes our appreciation of the</p> <p>10 opinion, that it -- about the Corps of Engineers'</p> <p>11 compliance with the National Historic Preservation</p> <p>12 Act. So under the particular legal issues at -- at</p> <p>13 play in the litigation under the National Historic</p> <p>14 Preservation Act, the opinion was -- was accepted, but</p> <p>15 it says, however, there were important issues raised</p> <p>16 by the Standing Rock Sioux Tribe, other tribal</p> <p>17 nations, regarding this pipeline, and, you know,</p> <p>18 our -- the process of pipeline decision more</p> <p>19 generally, so --</p> <p>20 Q. Right. All of which Judge -- all of</p> <p>21 what was put before Judge Boasberg in the ongoing</p> <p>22 litigation that the Department of Justice was fighting</p> <p>23 against, right?</p> <p>24 MS. BOBET: Objection, assumes facts not</p> <p>25 in evidence. If we're talking about the substance of</p>

68:7-
70:19
401-402;
602; 611;
802;
outside
scope of
30(b)(6)
notice

December 15, 2022

Page 70

1 what was happening in the litigation separate from the
 2 statement here, I think that's outside the scope as
 3 well. He's welcome to answer in his personal
 4 capacity.

5 MR. KERLIN: I -- I vehemently disagree.
 6 I believe it goes to the contents of this statement,
 7 which is clearly part of the topic, and what we
 8 provided additional guidance to -- to you so that you
 9 could prepare, on behalf of the United States, a
 10 witness from the Department of Justice that could
 11 answer these questions.

12 I don't think he's sufficiently answered
 13 any of my questions -- well, very few of them with
 14 respect to this topic. I think he's answered a few
 15 direct that I asked a minute ago and insisted on
 16 direct answers.

17 But I -- I think -- I think I'm going to
 18 move on to another -- it's the second-to-last
 19 paragraph in this statement.

20 MS. BOBET: And I'll -- I'll -- I
 21 disagree with the characterizations, but happy to move
 22 on.

23 Did you -- I'm sorry. Is there a
 24 question pending, or were you just reviewing the --
 25 the paragraph here?

ND OBJ:
Includes
argument of
counsel

71:6-72:12
106; 401-402;
611; 802

Page 72

1 adhere to those principles, which I think is also in
 2 support of law enforcement and a peace- -- a peaceful
 3 outcome.

4 Q. Okay. But there's no direct statement
 5 of support that says, you know, "We respect Sheriff
 6 Kirchmeier and his efforts to maintain law and order
 7 while there's these protests going on on Corps-managed
 8 land in Morton County, North Dakota. We support the
 9 State of North Dakota to try and maintain law and
 10 order while all of this is going on." None of that
 11 was included, right?

12 A. That's correct.

13 Q. Okay. And I think you mentioned
 14 earlier, but just so that we're clear, no one at North
 15 Dakota was consulted about the joint statement that
 16 was going to be issued, correct?

17 A. That's correct.

18 Q. Did -- did anyone at Department of
 19 Justice give North Dakota a heads-up that, "Hey, we're
 20 going to release this joint statement just to make you
 21 aware because -- you know, so you're aware, for your
 22 situat- -- situational awareness, that it may or may
 23 not have an impact on the protest and the protesters"?

24 A. Not to my knowledge, but I don't have
 25 complete knowledge of -- of who was communicated with,

72:13-

73:1

401-402

Page 71
 1 MR. KERLIN: Oh, no. I'm sorry. I was
 2 just trying to get -- if we could bring up the
 3 second-to-last paragraph on page 2 starting "Finally,
 4 we . . . support."

5 MS. BOBET: Got it.

6 Q. (BY MR. KERLIN) It says, the last
 7 sentence, "The Department of Justice and the Interior
 8 will continue to deploy resources to the United States
 9 [sic] to help state, local, and tribal authorities,
 10 and to the communities they serve, better communicate,
 11 defuse tensions, support peaceful protest, and
 12 maintain public safety." Do you see that?

13 A. I do.

14 Q. Okay. No mention of supporting
 15 North Dakota's State and local law enforcement
 16 officers to maintain law and order, correct?

17 A. I would not say that's -- that's
 18 correct. I think it -- it says clearly in the
 19 previous sentence, "any- -- anyone who commits violent
 20 or destructive acts may face criminal sanctions from
 21 federal, tribal, state, or local authorities."

22 So that was very intentionally a
 23 deterrent message to deter criminal activity and to
 24 promote, in the previous sentence before that, the
 25 principles of nonviolence, encouraging everyone to

Page 73

1 you know, prior to the release.

2 Q. Is the Department of Justice aware that,
 3 after this statement was issued, that the protesters
 4 viewed it as a victory?

5 MS. BOBET: Objection, assumes facts not
 6 in evidence, and calls for speculation.

7 Q. (BY MR. KERLIN) Okay. Let's go ahead
 8 and put that into evidence. You don't have to answer
 9 that question. I'm going to ask you again in about
 10 three minutes.

11 Can we bring up ARMY 117979?

12 Okay. I guess I need to flip back to
 13 494 just to point out one thing, and that's the timing
 14 of this release.

15 Okay. So the date of -- of this email,
 16 September 9, 2016, 1:47 p.m. Do you see that?

17 Okay. I want to keep moving forward, so
 18 I'm going to go back to 117979. We're going to mark
 19 it as the next exhibit. I believe we're up to
 20 Exhibit 853 [sic].

21 (Deposition Exhibit 854 was remotely
 22 introduced.)

23 Q. It's an email from you, again, to a
 24 distribution list that includes individuals at the
 25 Army, of course the Department of Justice, and the

73:12-

75:17-

401-

402

December 15, 2022

<p style="text-align: right;">Page 74</p> <p>1 Department of Interior. Can you see that?</p> <p>2 A. Yes.</p> <p>3 Q. You state, "Interesting article . . ."</p> <p>4 Again, this is -- the subject of the -- you know, the</p> <p>5 "Re" line, it's "Final Drafts of Statements." You're</p> <p>6 sending this out, and it says, "Interesting article in</p> <p>7 the Atlantic on the legal case." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So this is after the statement</p> <p>10 had been -- I guess this is shortly before the</p> <p>11 statement had been issued, right? It's 12:35 p.m.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. I see it.</p> <p>15 Q. Just to understand the timeline a little</p> <p>16 better, so we had the -- I think you said you first</p> <p>17 saw a draft on either the 7th or 8th of September,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. That statement was ready, had been -- in</p> <p>21 other words, you had it in the ready, and you were</p> <p>22 waiting for the Court's ruling, right? And then was</p> <p>23 the idea that, after the ruling came out, that the</p> <p>24 statement -- the joint statement could immediately be</p> <p>25 released?</p>	<p style="text-align: right;">Page 76</p> <p>1 product. I'll instruct the witness not to talk about</p> <p>2 the -- the substance of that nonfinal statement.</p> <p>3 MR. KERLIN: Ms. Bobet, has that been</p> <p>4 produced in this case?</p> <p>5 MS. BOBET: Are you asking me, of the</p> <p>6 300,000-some-odd documents, off the top of my head? I</p> <p>7 don't know what's been produced as it's -- I assume</p> <p>8 that it would be privileged in many of its draft</p> <p>9 forms, so if it's been produced, I would assume it's</p> <p>10 been -- it's been produced in a redacted form with an</p> <p>11 appropriate privilege redaction.</p> <p>12 MR. KERLIN: Yeah, I don't think it has.</p> <p>13 I've personally gone through all the emails</p> <p>14 Mr. Hornbuckle was on around this time period.</p> <p>15 Q. (BY MR. KERLIN) Mr. Hornbuckle, were</p> <p>16 you included on an email that included the draft</p> <p>17 statements on either September 7 or September 8 of</p> <p>18 2016? And I'm talking about the alternative one that</p> <p>19 would -- if Boasberg ruled for the tribe.</p> <p>20 A. I don't recall. I mean, there were a</p> <p>21 lot of emails on this, and so -- and -- and the --</p> <p>22 again, the statements themselves, I don't know how</p> <p>23 they would -- how -- how much substantively different.</p> <p>24 It's just that I think that the -- the step -- it's</p> <p>25 main -- it probably had to do with just explaining</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes.</p> <p>2 Q. Was there more than one joint statement?</p> <p>3 In other words, was there a statement that was</p> <p>4 prepared in case Judge Boasberg ruled in favor of the</p> <p>5 Corps, and then also one that was prepared in case</p> <p>6 Judge Boasberg ruled in favor of the Standing Rock</p> <p>7 Sioux Tribe?</p> <p>8 A. Yes, I believe there was two statements,</p> <p>9 but that -- that is a -- that's a normal trade craft,</p> <p>10 is that if you want to be prepared for an immediate</p> <p>11 response to a ruling, you need to -- to be prepared</p> <p>12 for either scenario.</p> <p>13 Q. Okay. Were these statements prepared at</p> <p>14 the same time or kind of together? I mean, obviously</p> <p>15 not at the same moment, but --</p> <p>16 A. I think throughout the course of the</p> <p>17 8th, working on -- working on both contingencies.</p> <p>18 Q. Okay. I don't think I've seen a copy of</p> <p>19 those statements, but it's possible that it might</p> <p>20 exist and has been produced in this litigation.</p> <p>21 Can you tell me what the alternative</p> <p>22 statement said?</p> <p>23 MS. BOBET: I'll object to the extent</p> <p>24 the question is asking about an unfinal, draft version</p> <p>25 that may reflect attorney comments or -- or work</p>	<p style="text-align: right;">Page 77</p> <p>1 what had actually happened.</p> <p>2 But -- but we also wanted to communicate</p> <p>3 that we were going to have these consultations, that</p> <p>4 we wanted to encourage nonviolence and all -- and all</p> <p>5 of that, so I think that the intent was still to just</p> <p>6 address the situation publicly and communicate</p> <p>7 effectively.</p> <p>8 Q. Got it. Do you -- did you lay eyes</p> <p>9 on -- do you recall seeing two statements, one that</p> <p>10 was the one that was ultimately released, and one that</p> <p>11 was ready to be released if the Court ruled a</p> <p>12 differently -- a different way than it did?</p> <p>13 A. I -- I -- I believe so, but I -- I</p> <p>14 can't -- you know, I don't have a photographic memory</p> <p>15 of these -- all these statements that day.</p> <p>16 Q. Understood. Okay. Let's -- let's go to</p> <p>17 MYERS 10033, please. And we'll label it as 854.</p> <p>18 THE REPORTER: I believe we had a 853</p> <p>19 before, and that last one was 854.</p> <p>20 MS. HYMEL: I agree.</p> <p>21 MR. KERLIN: Okay. So what am I up to</p> <p>22 now?</p> <p>23 MS. HYMEL: 855.</p> <p>24 MR. KERLIN: 855.</p> <p>25 (Deposition Exhibit 855 was remotely</p>

75:18-76:2
401-402; 50176:15-
77:15-
401-
402;
602

December 15, 2022

<p>1 introduced.)</p> <p>2 Q. (BY MR. KERLIN) An email that is an</p> <p>3 email that you sent, okay?</p> <p>4 A. Okay.</p> <p>5 Q. All right. I want to go to the end and</p> <p>6 work my way up. Okay. This is the last one. It's an</p> <p>7 email from Sam Hirsch, a wide distribution list, a</p> <p>8 number of folks. In the interest of time, we're not</p> <p>9 going through it.</p> <p>10 The subject is "Judge Boasberg's</p> <p>11 Order/Opinion and the Joint Army/Interior/Justice</p> <p>12 Statement," okay? And the time and date is</p> <p>13 September 9 at 2:52 p.m., okay?</p> <p>14 Hirsch says, "Attached please find Judge</p> <p>15 Boasberg's Order and Memorandum Opinion denying the</p> <p>16 plaintiff Standing Rock Sioux Tribe's motion for a</p> <p>17 preliminary injunction entirely.</p> <p>18 "Attached also please find DOJ's version</p> <p>19 of the Joint Statement which we will send out</p> <p>20 momentarily. My understanding is that the Army and</p> <p>21 the Interior will send out an identical statement,</p> <p>22 each on their own letterhead." Do you see it?</p> <p>23 A. I see it.</p> <p>24 Q. Okay. So then we go up an email;</p> <p>25 there's an individual named Dan Utech. Do you see</p>	<p>Page 78</p> <p>1 or statements or -- or info. They're info -- for</p> <p>2 information.</p> <p>3 So that this was a situation that had</p> <p>4 garnered a tremendous, you know, public interest</p> <p>5 and -- and -- and an outcry, and so it would not be</p> <p>6 unusual for us to let folks know in the administration</p> <p>7 of what we were doing. But the statement itself was</p> <p>8 not in concert with the White House. It was a joint</p> <p>9 statement with those three departments.</p> <p>10 Q. Okay. But it was in concert with the</p> <p>11 Department of the Interior and the Department of the</p> <p>12 Army?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And then if we go up one email,</p> <p>15 you're responding to Mr. Utech and everyone else. "We</p> <p>16 are sending it now," correct?</p> <p>17 A. Uh-huh.</p> <p>18 Q. All right. And if we go to the top,</p> <p>19 that's -- that's your email with a link to the joint</p> <p>20 statement.</p> <p>21 A. Right.</p> <p>22 Q. Okay. All right. That was 855.</p> <p>23 Let's -- let's jump to 856, please. I</p> <p>24 mean -- I'm sorry -- we're going to call it 856. It's</p> <p>25 MYERS 10036.</p>
<p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know who Dan Utech is?</p> <p>4 A. I believe he was -- he was with the</p> <p>5 White House, Executive Office of the President.</p> <p>6 That's what the line says, and I vaguely recall him.</p> <p>7 I don't know him.</p> <p>8 Q. Okay. And the request comes in from</p> <p>9 Mr. Utech on behalf of the Executive Office of the</p> <p>10 President. "Can you let us know when your statement</p> <p>11 is actually out," question mark. "Thanks." Do you</p> <p>12 see that?</p> <p>13 A. Yep. I see it.</p> <p>14 Q. Is this again kind of consistent with</p> <p>15 what you were saying earlier, if there's a joint</p> <p>16 statement going out, we want to make sure that the</p> <p>17 Department of the Interior, the Department of the --</p> <p>18 of Justice, the Department of the Army, also Executive</p> <p>19 Office of the President are all on the same page,</p> <p>20 so -- I think you described it as a partnership, so</p> <p>21 the federal government is speaking with one voice?</p> <p>22 A. I -- not necessarily with regard to the</p> <p>23 Executive Office of the President. That would be --</p> <p>24 communications with the Executive -- with the</p> <p>25 White House are about when -- about department actions</p>	<p>Page 79</p> <p>1 (Deposition Exhibit 856 was remotely</p> <p>2 introduced.)</p> <p>3 Q. Okay. This is an email from you, and it</p> <p>4 just has the link to the statement. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. This is 1:08 p.m. You're</p> <p>7 responding to Karen Diver. Do you know who Karen</p> <p>8 Diver is?</p> <p>9 A. Again, another -- another White House</p> <p>10 official. I don't -- I don't recall.</p> <p>11 Q. Sure. Fair enough.</p> <p>12 Let's go to the next page. We can look</p> <p>13 at -- she sent an email, and then this is the --</p> <p>14 the -- her text of her email is "Please confirm Press</p> <p>15 Release publication as soon as possible," and then it</p> <p>16 has her signature block, which -- which indicates</p> <p>17 she's Special Assistant to the President for Native</p> <p>18 American Affairs. Do you see that?</p> <p>19 A. Yeah. That makes sense. Yeah.</p> <p>20 Q. Okay. And so then you're sending it to</p> <p>21 her as well, a different White House official,</p> <p>22 providing a link to the joint statement that was</p> <p>23 issued, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Let's go to MYERS 45235.</p>

81:12-
24
401-402

Patrick Wynters Hornbuckle 30 (b) (6)

December 15, 2022

84:9-
88:13
401-
402;
602;
611;
802;
outside
scope of
30(b)(6)
notice

December 15, 2022

<p style="text-align: right;">Page 86</p> <p>1 just the start of the article, "The smoldering fires 2 had been burning"</p> <p>3 Yeah, I'm sorry, just that whole part.</p> <p>4 I -- I don't need to get that granular.</p> <p>5 "In his hand was an official statement 6 released about an hour earlier," okay, "by the 7 U.S. Department of Justice. It regarded a lawsuit by 8 the Standing Rock Sioux Indian Tribe against the 9 U.S. Army Corps of Engineers. The tribe claimed the 10 government agency inadequately consulted . . . them 11 about a multibillion-dollar pipeline project." Are 12 you with me?</p> <p>13 A. Yep.</p> <p>14 Q. Okay. Skip down to the next paragraph. 15 The second sentence says, "Anticipation over U.-" -- 16 well, it mentioned -- let's just start with the 17 beginning of it. I'm sorry.</p> <p>18 "[Over] two hundred demonstrators, 19 mostly people who had been camping for weeks near the 20 Sacred Circle, had gathered there to eat and wait. 21 Anticipation over U.S. District Judge Boasberg's 22 ruling in the case had been mounting, even though the 23 tribe's chairman, David Archambault II, had tried to 24 downplay the significance of the decision. '[What] 25 happens, there's going to be an appeal process,' said</p>	<p style="text-align: right;">Page 88</p> <p>1 the joint statement, issued in part by the Department 2 of Justice, as a victory to their cause?</p> <p>3 MS. BOBET: I'll -- I'll object. This 4 is outside the scope of the topic and what we 5 understood would be asked about, and also that it 6 calls for speculation. But Mr. Hornbuckle may answer 7 for himself.</p> <p>8 A. I think that the articles reflect -- the 9 articles which were written by the press, you know, 10 reflect a particular glimpse into the way some people 11 perceived -- perceived it. So some may have perceived 12 it as a victory, a temporary victory, but others 13 may -- may not have.</p> <p>14 But, overall, I think that the -- it was 15 received as -- it was not a -- it was not a -- 16 something that was going escalate the situation. So I 17 think that that's -- that was my perception of what 18 was going on there, is things were settling down; 19 people thought they were being heard, and -- and so -- 20 in that the government was hearing the concerns of the 21 tribes and -- and the protesters in -- in this regard, 22 in -- in taking the position and releasing this 23 statement.</p> <p>24 How -- how everyone viewed it, I 25 don't -- I can't say.</p>
<p style="text-align: right;">Page 87</p> <p>1 the chairman on Thursday before the ruling. Now, 2 Eagle stood in the same spot, reading the DOJ 3 statement." Okay?</p> <p>4 If we go to the next paragraph, it says, 5 "'Construction of the pipeline on Army Corps land 6 bordering or under Lake Oahe will not go forward at 7 this time,' he read aloud. Then he paused, looked 8 towards the crowd over the rim of his reading glasses 9 and declared, 'You Stopped It,'" okay?</p> <p>10 According to this article, he was 11 telling all the protesters that they were able to stop 12 the pipeline construction. Do you see that?</p> <p>13 A. I see it. I see the quote, yeah.</p> <p>14 Q. And then the next sentence says, "Men 15 hooted and shot single fists into the air. Women 16 lulu'ed calls of victory. As Eagle read on, the 17 celebration grew. Many people did their best to fight 18 off tears." Do you see that?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. And this is an article that you 21 disseminated to a number of individuals, I believe, 22 mostly at the Department of Justice; it looks like 23 also at the FBI.</p> <p>24 Based on this article, would you agree 25 with me that at least some of the protesters viewed</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. KERLIN: Object to the nonresponsive 2 portion.</p> <p>3 Q. (BY MR. KERLIN) Mr. Hornbuckle, did you 4 ever go out to North Dakota to see the protests or the 5 protest response?</p> <p>6 A. I did not.</p> <p>7 Q. So when you say you had some basis on 8 it, where were you getting that information as far as 9 what was going on out at the protest sites? News 10 articles?</p> <p>11 A. Actually, I believe the OTJ director may 12 have been there on the ground at the time; CRS, I 13 believe, may have been -- had personnel out there; 14 and -- and, of course, our -- I don't know if the 15 U.S. Attorney had people, but they were certainly 16 aware of what was going on.</p> <p>17 So some things were being received from 18 the media, which was also observing the situation, but 19 also through some firsthand accounts as well.</p> <p>20 Q. Can we pull up USACE 84181. We'll mark 21 this as the next exhibit, which I think we're up to 22 859.</p> <p>23 (Deposition Exhibit 859 was remotely 24 introduced.)</p> <p>25 Q. It's an email from Eileen Williamson. I</p>

December 15, 2022

<p style="text-align: right;">Page 90</p> <p>1 don't believe you're on the email, Mr. Hornbuckle, but 2 your name does appear on the -- in the email. 3 If we go to the second paragraph. It 4 says, "I resent the joint statement on Friday after it 5 was released by the U.S. DOJ because we have contacts 6 for several small newspapers in North and South Dakota 7 that are not serviced by most press release 8 distribution services, like Vocus, PR Newswire, 9 BusinessWire, et cetera. (It was about 200 contacts). 10 In that statement, I noted that 'The U.S. Army 11 Corps of Engineers is referring all queries related to 12 the Dakota Access Pipeline to the U.S. Department of 13 Justice Contact: Wyn Hornbuckle" It's got 14 your phone number and your email address, okay? 15 The date of this -- this is the Monday 16 after the press release. Did you receive, on behalf 17 of the Department of Justice or the U.S. Army Corps of 18 Engineers, as it was directing them to you, questions, 19 requests for comments about the joint statement that 20 was issued? 21 A. I don't remember the specific traffic, 22 but undoubtedly there were ongoing media inquiries 23 that were coming to -- to the department on this 24 issue. So I -- I don't recall any other responsive -- 25 responsive statements beyond what we had -- we had put</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. KERLIN: Let's take a quick break. 2 And if I can get a check on the time after we go off 3 the record. 4 THE VIDEOGRAPHER: Going off the record. 5 The time is 6:02 p.m. UTC, 11:02 a.m. Mountain. 6 (Recess taken 11:02 a.m. to 11:14 a.m. 7 Mountain Standard Time.) 8 THE VIDEOGRAPHER: We're back on the 9 record. The time is 6:14 p.m. UTC, 11:14 a.m. 10 Mountain. 11 Q. (BY MR. KERLIN) All right, 12 Mr. Hornbuckle, we're back after a short break. Able 13 to continue? 14 A. Yes. 15 Q. Okay. Anything that you would change 16 about your prior testimony or add to it that we 17 haven't already discussed? 18 A. No. 19 Q. Okay. If we could bring up Exhibit 821. 20 Okay. This is another joint statement. It's on the 21 Department of Justice letterhead. Can you see that on 22 your screen? 23 A. Yep, I see it. 24 Q. Okay. Do you recall this joint 25 statement?</p>
<p style="text-align: right;">Page 91</p> <p>1 out after the ruling. But -- 2 Q. Okay. 3 A. -- it was -- yeah, that's not uncommon. 4 I'm -- I'm often as the -- as sort of the client -- as 5 the lawyer for the government, often I am the person 6 that -- that our client agencies would refer me to on 7 various issues. 8 Q. Okay. And then would you address issues 9 regarding -- I mean, would you be the -- excuse me -- 10 the point of contact consistent with what this is -- 11 this stated, that -- for the U.S. Corps of Engineers 12 regarding queries about this statement? 13 A. I would -- I would be for -- for the 14 media. I -- I -- I don't think that I would -- our 15 office doesn't have the capacity to answer, you know, 16 everyone who has questions. 17 For instance, the department might 18 receive -- if it was calls from tribes or tribal 19 members, that might end up with the Office of Tribal 20 Justice, or if it was people calling to report civil 21 rights concerns, that might be, you know, funneled to 22 a different place. 23 So this is primarily about handling -- 24 triaging the media inquiries. 25 Q. Okay. Sounds good.</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes, I recall. 2 Q. Were you involved with the process of 3 creating it? 4 A. Yes, I was. 5 Q. The same types of questions that we 6 talked about with the previous joint statement: Do 7 you know which department kind of took the laboring 8 oar to prepare the first draft of this statement? 9 A. Well, I reviewed my own email traffic, 10 and it was me. I -- I knew that we, again, would 11 have, you know, a ruling coming from the Court, and so 12 thought it would be in the Department's interest that 13 we prepare for that and to have a public statement 14 prepared. So -- so I took the first cut at it, I 15 believe, and then sent it around for review. 16 Q. Okay. Did you send it internal to the 17 Department of Justice or did -- did the 18 distribution -- I mean, did you send it to -- to 19 individuals outside of the Department of Justice? 20 A. No, I -- I believe I sent it only 21 to within, which would be my normal practice. 22 Q. Okay. If we pull up the -- 23 A. I mean, I don't know if -- the Army 24 Corps was also probably involved in reviewing it at 25 some point. I don't recall being the person who</p>

 92:19
 93:15
 401-
 402

December 15, 2022

<p style="text-align: right;">Page 94</p> <p>1 distributed it to them, but it's -- it's possible.</p> <p>2 Q. Okay. If we pull up -- one, two,</p> <p>3 three -- the fourth paragraph that starts "The Army</p> <p>4 continues." Okay. Did you have any specific</p> <p>5 discussions with the Army about its review process</p> <p>6 that was ongoing?</p> <p>7 A. I don't have -- recall having</p> <p>8 substantive discussions about the -- their review, and</p> <p>9 probably would defer to other folks who were in touch</p> <p>10 with them on that from our department leadership.</p> <p>11 Q. And then it says, "In the interim" --</p> <p>12 the second sentence, "In the interim, the Army will</p> <p>13 not authorize constructing the Dakota Access Pipeline</p> <p>14 on Corps lands bordering or under Lake Oahe. We</p> <p>15 repeat our request that the pipeline company</p> <p>16 voluntarily pause all construction activity within</p> <p>17 20 miles east or west of Lake Oahe." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So I guess what -- what I just</p> <p>20 want to make sure I understand, the Department of</p> <p>21 Justice is not -- I mean --</p> <p>22 Let me see if I can ask it this way:</p> <p>23 It's the U.S. Army Corps of Engineers that would be</p> <p>24 the entity that would have oversight of this pipeline</p> <p>25 crossing at --</p>	<p style="text-align: right;">Page 96</p> <p>1 THE REPORTER: Yes.</p> <p>2 MR. KERLIN: Thank you.</p> <p>3 (Deposition Exhibit 860 was remotely</p> <p>4 introduced.)</p> <p>5 Q. (BY MR. KERLIN) Okay. You're on some</p> <p>6 of these emails but not all, so I'm going to -- I'm</p> <p>7 not going to ask you questions about the -- about the</p> <p>8 emails that are -- that are -- you're obviously not</p> <p>9 on. So what I would like to do is go to the</p> <p>10 second-to-last page. I guess if we just start at the</p> <p>11 end, is probably the best place.</p> <p>12 There's an email from you to Blake</p> <p>13 Nicholson. Do you know who Blake Nicholson is?</p> <p>14 A. Just -- I maybe recall this, but I saw</p> <p>15 an earlier email that he was with the Associated</p> <p>16 Press. Is that correct?</p> <p>17 Q. Yes, I believe so, but --</p> <p>18 A. Yes, I -- I -- I have some recollection</p> <p>19 of dealing with him during the time.</p> <p>20 Q. Okay. And you state, "I understand you</p> <p>21 were asking for a response regarding the letter to the</p> <p>22 Obama administration from North Dakota law</p> <p>23 enforcement." And you say, "Here's a statement</p> <p>24 attributable to me, a Department of Justice spokesman,</p> <p>25 if you can still work it in."</p>
<p style="text-align: right;">Page 95</p> <p>1 I guess what I'm trying to understand is</p> <p>2 why did someone at the Department of Justice prepare a</p> <p>3 joint statement that includes statements about what</p> <p>4 the Army will or will not do? Can you provide any</p> <p>5 insight about that?</p> <p>6 A. Again, it was -- it was the -- it was in</p> <p>7 this voice of all three departments. That was the</p> <p>8 intent of the -- the -- the release. Very similar to</p> <p>9 September 9, it was intended to -- to just inform the</p> <p>10 public that this would -- of what happened, what the</p> <p>11 Court decided, where we are in the process, and</p> <p>12 what -- and what -- and that the Army's review</p> <p>13 continued, and that -- you know, and -- and also sort</p> <p>14 of a time -- an indication of that it would -- hopes</p> <p>15 to conclude its review soon, and -- and to just</p> <p>16 repeat.</p> <p>17 So in other words, this was very much a</p> <p>18 re- -- a restatement of where we stood in this process</p> <p>19 to -- and to communicate again in the wake of another</p> <p>20 judicial decision.</p> <p>21 Q. Okay. Okay. Got it.</p> <p>22 Let's -- let's take a look at -- it's</p> <p>23 North Dakota -- I'm sorry, ND 256324. And I guess</p> <p>24 we're going to -- make sure I have this correct,</p> <p>25 Exhibit 860? Is that right?</p>	<p style="text-align: right;">Page 97</p> <p>1 And I'm not going to go through</p> <p>2 everything that you included there, but I just want to</p> <p>3 point out the date, December 12, 2016. Okay. So the</p> <p>4 protest had been going on for three or four months,</p> <p>5 okay?</p> <p>6 And then Blake responds. So you have</p> <p>7 your statement, but that's not really the focus of</p> <p>8 this. It's -- I think you'll understand where I'm</p> <p>9 going here in a minute.</p> <p>10 If we go to the prior email. So Blake</p> <p>11 responds to you a day later on the 13th. "Thank you.</p> <p>12 Can you please elaborate on some things?</p> <p>13 "ND law enforcement has specifically</p> <p>14 requested 100 Border Patrol agents and members of the</p> <p>15 U.S. Marshals Service Special Operations Group, along</p> <p>16 with an unspecified amount of financial assistance.</p> <p>17 Will those requests be considered?"</p> <p>18 And then he asks, "What is meant by the</p> <p>19 phrase 'committed to supporting local law</p> <p>20 enforcement.' Support in what form, exactly?</p> <p>21 "What, exactly, are 'community policing</p> <p>22 resources'?"</p> <p>23 "What are Community Relations Service</p> <p>24 conciliators? What do they do? How many were/have</p> <p>25 been deployed to North Dakota, and when?"</p>

 97:1-
 98:14
 401-
 402;
 611;
 802

December 15, 2022

<p style="text-align: right;">Page 98</p> <p>1 Some of this we've talked about, but I 2 want to go back to the -- if we go back one more page, 3 we have your response to it. And with respect -- with 4 respect to the question from the -- from -- from 5 Mr. Nicholson with the AP about the request for Border 6 Patrol and U.S. Marshals Service SOG, or Special 7 Operations Group, I think your first bullet point 8 addresses that, okay, and so I want to ask you about 9 it.</p> <p>10 "The Department continues to hold the 11 view that additional law enforcement resources on the 12 ground could serve to escalate, rather, than 13 deescalate tensions." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So --</p> <p>16 MS. BOBET: I'm -- I'm so sorry to 17 interrupt. I just want to make it clear. I don't -- 18 this is a couple of months after the October 10 19 statement, so I just want to know if we're on a 20 diff- -- different topic now or if this is in his 21 personal capacity.</p> <p>22 MR. KERLIN: No. This is "withhold law 23 enforcement" support or "provide."</p> <p>24 MS. BOBET: Okay. Topic 20. Got it.</p> <p>25 MR. KERLIN: Yep.</p>	<p style="text-align: right;">Page 100</p> <p>1 specific about them, and -- yeah.</p> <p>2 Q. Okay. And then I think the last 3 document that I have, it's MYERS 40535.</p> <p>4 MS. HYMEL: Paul, I'm looking, but I 5 don't think I have that.</p> <p>6 MR. KERLIN: MYERS, and then it's three 7 leading zeros, 40535?</p> <p>8 MS. BOBET: I don't see that in the 9 materials we got just before the deposition either.</p> <p>10 I think we're also at the end of the 11 State's allotted time here.</p> <p>12 MR. KERLIN: Okay.</p> <p>13 Q. (BY MR. KERLIN) All right.</p> <p>14 Mr. Hornbuckle, I appreciate your time. Have I been 15 respectful and courteous to you in this deposition?</p> <p>16 A. Yes, sir.</p> <p>17 MR. KERLIN: Okay. With that, the State 18 would pass the witness.</p> <p>19 MS. BOBET: All right. I know we just 20 took a break, but I'll take an additional five or so 21 minutes just to look over my notes.</p> <p>22 I'll have a couple of follow-up 23 questions for you, Mr. Hornbuckle, and then we can let 24 you get on with your day.</p> <p>25 THE DEPONENT: Okay.</p>
<p style="text-align: right;">Page 99</p> <p>1 MS. BOBET: Thank you.</p> <p>2 MR. KERLIN: Right.</p> <p>3 Q. (BY MR. KERLIN) So Mr. -- the AP is 4 asking for clarity about North Dakota's request for 5 the U.S. Marshals SOG group and the Border Patrol 6 agents.</p> <p>7 Is -- is -- your response to him, was 8 that the position of the Department of Justice still, 9 in December 13 of 2016, that it continues to hold the 10 view that additional law enforcement resources on the 11 ground can serve to escalate rather than to deescalate 12 tensions?</p> <p>13 A. Yes. I think that's -- I wouldn't have 14 said it if it wasn't the Department's position.</p> <p>15 Q. I understand that, but by that, we can 16 take it to mean that the request for the U.S. Marshals 17 SOG group, as well as Border Patrol agents, those are 18 denied, right?</p> <p>19 A. I -- that -- those -- those -- those 20 resources were not deployed, so I -- I -- I don't -- I 21 don't know the decision -- precise decision-making 22 process behind that.</p> <p>23 Q. Okay.</p> <p>24 A. So I was trying to explain here what -- 25 some of the resources that have been deployed, be more</p>	<p style="text-align: right;">Page 101</p> <p>1 THE VIDEOGRAPHER: Going off the record, 2 the time is 6:26 p.m. UTC, 11:26 a.m. Mountain. 3 (Recess taken 11:26 a.m. to 11:34 a.m. 4 Mountain Standard Time.)</p> <p>5 THE VIDEOGRAPHER: We're back on the 6 record. The time is 6:34 p.m. UTC, 11:34 a.m. 7 Mountain.</p> <p>8 EXAMINATION</p> <p>9 BY MS. BOBET:</p> <p>10 Q. All right. We are back after a short 11 break. I'll thank you now, Mr. Hornbuckle, for -- for 12 your time in the deposition.</p> <p>13 Just a few, kind of, follow-up matters.</p> <p>14 You -- you were asked earlier about the 15 Department of Justice, Main Justice's decision 16 regarding requests to deploy law enforcement 17 resources. Do you recall that line of questioning?</p> <p>18 A. Yes.</p> <p>19 Q. And I think you explained, correct me if 20 I'm -- I'm not summarizing this accurately, but I 21 think you explained that the ultimate decision on 22 whether to deploy resources, that Main Justice could 23 deploy, rested with department officials. Do I have 24 that right?</p> <p>25 A. The ultimate decision, yes.</p>

99:3-22
401-402; 802

December 15, 2022

<p style="text-align: right;">Page 102</p> <p>1 Q. And in the course of considering and 2 making those decisions, did DOJ Main Justice officials 3 consult with other federal agencies or components? 4 A. Yes, I believe they did.</p> <p>5 Q. And you -- you testified shortly before 6 the break about the draft of the October 10 joint 7 statement. I think perhaps you refreshed your memory 8 on -- on this a bit, and do you recall whether you 9 sent a draft of that joint statement in advance of 10 October 10 to anyone with the Corps of Engineers?</p> <p>11 A. Yes. Yeah. On further recollection, 12 since I -- I drafted that particular version of the 13 statement on -- on October 10, I was more involved in 14 clearing the statement through the -- all the 15 stakeholders who needed to look at it than I recalled 16 previously. But, yes, I -- I sent it over to the 17 Corps and Interior.</p> <p>18 Q. Fair to say that you, yourself, were 19 closely involved with crafting both the September 9 20 and the October 10 joint statements?</p> <p>21 A. Yes, I think that's fair to say.</p> <p>22 Q. And is that -- that kind of, quote, role 23 with crafting those statements, is that typical in 24 your role as a public affairs officer for Main 25 Justice?</p>	<p style="text-align: right;">Page 104</p> <p>1 A. It would have been the same -- the same 2 folks who were likely involved in the September 9.</p> <p>3 Q. And then do you recall about how far in 4 advance of when it was released that you had engaged 5 in this effort with the U.S. Army Corps to review it 6 or approve it?</p> <p>7 A. I think it was all in the course of 8 about 24 hours. I don't think that it was -- it 9 was -- like the previous statement, it was on the eve 10 of this expected decision.</p> <p>11 MR. KERLIN: Okay. That's all the 12 questions I have for you.</p> <p>13 THE VIDEOGRAPHER: Okay. This 14 concludes --</p> <p>15 MS. BOBET: Nothing further for the 16 State.</p> <p>17 THE VIDEOGRAPHER: Okay. This concludes 18 today's deposition of Wyn Hornbuckle. The time is 19 6:39 p.m. UTC, 11:39 a.m. Mountain. We are off the 20 record.</p> <p>21 (At 11:39 a.m. Mountain Standard Time 22 the proceedings were not being videotaped.)</p> <p>23 (Discussion off the record.)</p> <p>24 MS. BOBET: Tracy, anything else you 25 need from this witness before we let him go?</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Yes, quite typical.</p> <p>2 MS. BOBET: Okay. Those were my 3 follow-up questions. I'll turn you back to Mr. Kerlin 4 if there's any redirect.</p> <p>5 EXAMINATION</p> <p>6 BY MR. KERLIN:</p> <p>7 Q. My only question would be -- is with 8 respect to the October 10 statement, so I just want to 9 make sure I understand. So now you're saying that you 10 did send it to someone at U.S. Army Corps of Engineers 11 before it was released?</p> <p>12 A. Yes. I think I -- I started to say that 13 when we talked previously, is that because I was 14 involved in clearing the statement and I -- I authored 15 it, I was more involved in getting consensus around 16 the -- the language than I was the first -- in the 17 first iteration. So -- so, yeah, I shared it with -- 18 with the Corps and the Interior because they were 19 coauthors on the statement.</p> <p>20 Q. Anyone in particular at the Corps that 21 you were -- you recall working with on that?</p> <p>22 A. I don't recall exactly who.</p> <p>23 Q. Do you recall who --</p> <p>24 A. It would have been --</p> <p>25 Q. I'm sorry.</p>	<p style="text-align: right;">Page 105</p> <p>1 THE REPORTER: No.</p> <p>2 MS. BOBET: Okay. Well, thank you 3 again, Wyn. We appreciate your time. 4 (Discussion off the record.)</p> <p>5 THE REPORTER: I do need to get orders 6 on the record.</p> <p>7 MS. BOBET: We will read and sign for 8 any errata.</p> <p>9 THE REPORTER: And, Paul, are you 10 ordering the transcript?</p> <p>11 MR. KERLIN: Yes. Our, just, usual 12 order. Yeah, we get the same in all.</p> <p>13 THE REPORTER: And any hurry on the 14 final? Any hurry on the timing of the transcript?</p> <p>15 MR. KERLIN: I don't think so. I think 16 normal turnaround. What would that be, about ten 17 days?</p> <p>18 THE REPORTER: Right now, this says 19 January 2. I'm guessing it's because of the holidays, 20 but that's the last date that you would get it by.</p> <p>21 MR. KERLIN: That sounds fine.</p> <p>22 THE REPORTER: Okay.</p> <p>23 MR. KERLIN: Thanks again.</p> <p>24 MS. BOBET: Thank you.</p> <p>25 WHEREUPON, the within proceedings were</p>

December 15, 2022

<p style="text-align: right;">Page 106</p> <p>1 concluded at the approximate hour of 11:40 a.m. 2 Mountain Standard Time on the 15th day of December, 3 2022.</p> <p>4 * * * *</p> <p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 108</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF COLORADO)) ss. 3 CITY AND COUNTY OF DENVER) 4</p> <p>I, TRACY C. MASUGA, Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that previous to the commencement of the examination, the said PATRICK WYNTERS "WYN" HORNBUCKLE was duly sworn or affirmed by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.</p> <p>I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.</p> <p>IN WITNESS WHEREOF, I have affixed my signature this 3rd day of January, 2023.</p> <p><u>X</u> Reading and Signing was requested. <u> </u> Reading and Signing was waived. <u> </u> Reading and Signing is not required.</p> <p style="text-align: center;"> Tracy C. Masuga Registered Professional Reporter Certified Realtime Reporter</p>
<p style="text-align: right;">Page 107</p> <p>I, PATRICK WYNTERS "WYN" HORNBUCKLE, do hereby certify that I have read the above and foregoing deposition and that the same is a true and accurate transcription of my testimony, except for attached amendments, if any.</p> <p>Amendments attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>PATRICK WYNTERS "WYN" HORNBUCKLE</p> <p>The signature above of PATRICK WYNTERS "WYN" HORNBUCKLE was subscribed and sworn or affirmed to before me in the county of _____, state of _____, this _____ day of _____, 2023.</p> <p>Notary Public My Commission expires:</p> <p>State of North Dakota 12/15/22 (tcm)</p>	<p style="text-align: right;">Page 109</p> <p>1 Errata Sheet 2 3 NAME OF CASE: Plaintiff vs UNITED STATES 4 DATE OF DEPOSITION: 12/15/2022 5 NAME OF WITNESS: Patrick Wynters Hornbuckle 6 Reason Codes: 7 1. To clarify the record. 8 2. To conform to the facts. 9 3. To correct transcription errors. 10 Page _____ Line _____ Reason _____ 11 From _____ to _____ 12 Page _____ Line _____ Reason _____ 13 From _____ to _____ 14 Page _____ Line _____ Reason _____ 15 From _____ to _____ 16 Page _____ Line _____ Reason _____ 17 From _____ to _____ 18 Page _____ Line _____ Reason _____ 19 From _____ to _____ 20 Page _____ Line _____ Reason _____ 21 From _____ to _____ 22 Page _____ Line _____ Reason _____ 23 From _____ to _____ 24 25</p>